



# **Modernizing the Credit Unions and Caisses Populaires Act**

*Additional Draft Regulations for Consultation*

*Proposed by the  
Ministry of Finance  
February, 2009*





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*This Consultation Draft is intended to  
facilitate constructive dialogue concerning its contents.*

*Note that these regulations will become law only if the Lieutenant Governor  
in Council proclaims legislative changes and approves the regulations.*



February, 2009

Dear Stakeholder:

I am pleased to enclose for your review and comment a copy of *Modernizing the Credit Unions and Caisses Populaires Act: Additional Draft Regulations for Consultation*. The enclosed draft regulations form the final package of proposals associated with the project to modernize the *Credit Unions and Caisses Populaires Act, 1994*. The first package of regulations consulted on in 2006, which updated selected portions of the capital and lending rules was implemented in 2007.

It is expected that this final package of proposed regulations would, if approved, be accompanied by an order to proclaim the 2007 amendments that were made to the *Credit Unions and Caisses Populaires Act, 1994* by the *Budget Measures and Interim Appropriation Act, 2007*.

The proposals described in this document are intended to enable credit unions and caisses populaires to serve their members better and support the sector's competitiveness in delivering financial services. The ministry is interested in receiving input from individual credit unions and caisses populaires, their members, and others. Your views will assist the ministry in finalizing these regulations.

The enclosure contains information on how you can submit comments on these proposals. Submissions will be accepted until March 31, 2009.

Thank you for taking the time to read this consultation draft. Your input is appreciated and will be taken into consideration.

Sincerely,



Wayne Arthurs  
Parliamentary Assistant to the  
Minister of Finance



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## I. INVITATION FOR COMMENTS

The Ministry of Finance invites your comments on the proposals outlined in this consultation draft. Interested parties are asked to provide their written submissions by March 31, 2009. This guide gives readers a brief outline of changes under consideration. Readers are encouraged to focus their attention on the actual wording of the consultation draft of the regulations, rather than relying only on this guide.

If you have any comments or questions about this consultation or how any element of your submission may be used or disclosed, please contact:

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A copy of this consultation document can be reviewed online at:  
<http://www.fin.gov.on.ca/english/consultations/cu-cp>

The content, structure, and form of the draft regulations are subject to change as a result of the consultation process and as a result of review by the government. These proposals will become law only if the Lieutenant Governor in Council proclaims legislative changes and approves the regulations.

Please note that this is a public consultation. All comments received will be considered public and may be used by the ministry to help evaluate and revise the proposed draft regulations. This may involve disclosing some or all comments or materials, or summaries of them, to other interested parties during and after the consultation.

Any personal information in submissions, such as names and contact details (e.g., home addresses and phone numbers, personal email addresses, etc.) – in addition to any other information that could be used to identify an individual – will not be disclosed, subject to any legal requirements, without prior written consent. However, records created by individuals acting in their professional capacity (i.e., on behalf of a group, association, business, commercial enterprise, etc.) may be disclosed, unless the covering letter states that such disclosure would be harmful and/or prejudicial. Further information regarding the collection, use and disclosure of information can be found in the *Freedom of Information and Protection of Privacy Act* at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

If you feel your comments should not be shared with other parties, please indicate this in your covering letter and include your reasons.

## II. SUMMARY OF PROPOSALS

Amendments to the *Credit Unions and Caisses Populaires Act, 1994* ("the CUCPA") received Royal Assent on May 17, 2007 but have not yet been proclaimed. Many of the proposals in these draft regulations are contingent on the legislative amendments being proclaimed.

It is proposed that Ontario Regulation 79/95 (Stabilization Funds Established Under a Predecessor Act) made under the CUCPA be repealed.

It is also proposed that three regulations currently made under the CUCPA be repealed and replaced with a single new regulation. These regulations are: Ontario Regulation 76/95 (Credit Unions), Ontario Regulation 77/95 (Leagues), and Ontario Regulation 78/95 (Deposit Insurance Corporation of Ontario).

In addition, a new regulation regarding the Cost of Borrowing and Disclosure to Borrowers is being proposed.

## III. GENERAL REGULATION

### ***1. Trusts for Named Beneficiaries (s. 6)***

When proclaimed, an amendment to the CUCPA will permit a credit union to accept deposits from a member in trust for a named beneficiary if the deposits are required or governed under an Act. The proposed regulation would list the Acts that are prescribed for these purposes.

### ***2. Payments re Deceased Members (s. 7)***

It is proposed that the regulation set \$50,000 as the maximum amount a credit union can pay in respect of a deceased member's deposits or shares to an entitled person in the circumstances to be set out in the CUCPA.

### ***3. Number of Shares (s. 8)***

When proclaimed, an amendment to the CUCPA will permit a member of a credit union to hold more than the minimum number of shares required to be a member. The draft regulation proposes that a member be permitted to purchase up to \$1,000 in additional membership shares. These additional shares would be included in the determination of the regulatory capital of a credit union.

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#### **4. Offering Statement (s. 10 - 13)**

The proposed regulation would set out the information that would be required in an offering statement if a credit union were incorporated or amalgamated within 90 days before the date on the offering statement.

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#### **5. Adequate Capital (s. 14 - 17)**

The proposed regulation would set out updated criteria for determining whether a credit union is maintaining adequate capital. The calculation of total assets and regulatory capital and the risk-weighting of assets would be updated and would include new requirements regarding tier 1 and tier 2 capital.

Additional rules regarding the calculation of total assets and regulatory capital, as well as the risk-weighting of assets, would be set out in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*, to be published in *The Ontario Gazette* by the Deposit Insurance Corporation of Ontario (DICO). A copy of the draft guideline is included in this consultation.

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#### **6. Group Capital (s. 18)**

When proclaimed, an amendment to the CUCPA will permit two or more credit unions to enter into an agreement with a league to form a group for the purpose of assisting credit unions in the group to satisfy capital requirements.

The proposed regulation would set out the mandatory requirements of the group capital agreement. For example, if a credit union were ordered to increase its capital by DICO, then the league would agree to advance the additional capital within 45 days of the order. Member credit unions would agree to jointly and severally indemnify the league for any amounts the league invested to assist a member in meeting capital requirements. In addition, a credit union would be allowed to withdraw from the group on 18 months notice to the league and the other credit unions in the group, but only if all group members have satisfied statutory capital requirements throughout the 12 months prior to its withdrawal.

The proposed regulation would also set out the circumstances under which DICO could revoke its approval of an agreement.

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## **7. Adequate Liquidity (s. 19 - 20)**

Under the proposals, the regulation would set out separate liquidity requirements for class 1 and class 2 credit unions.

A class 1 credit union would be required to keep seven per cent of its total assets in eligible liquid assets. The amount would be reduced to five per cent if the credit union has a line of credit with a financial institution, Credit Union Central of Canada, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, or La Caisse centrale Desjardins du Québec totaling at least two per cent of the credit union's deposits. However, the line of credit could only be revoked after at least 30 days notice to the credit union, and the terms of the line of credit would need to be set out in writing. The proposed regulation would also remove the requirement for determining net liquidity.

A class 2 credit union would be required to establish and maintain prudent levels and forms of liquidity sufficient to meet its cash-flow needs.

The proposed regulation would no longer define or set requirements for the operation of a liquidity pool.

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## **8. Credit Committee**

When proclaimed, amendments to the CUCPA will repeal the requirement for a credit union to have a credit committee. The proposed regulation would therefore not prescribe any matters regarding the reports or business of the credit committee.

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## **9. Duties of Audit Committee (s. 26)**

The audit committee's report to members at the annual meeting would need to include information about the number of meetings held by the committee, a summary of significant activities undertaken by the committee, confirmation that the committee is conducting its affairs in accordance with the CUCPA, and information about any failure of the credit union to implement any significant recommendation previously made by the committee.

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## **10. Salary Disclosure (s. 27)**

When proclaimed, an amendment to the CUCPA will require a credit union to disclose prescribed information about remuneration paid to its officers and employees. The proposed regulation would require the disclosure of the name, title, salary, bonuses, and benefits paid to the officers or employees of a credit union whose total remuneration for the year was over \$150,000. If the credit union had more than five officers and employees whose total remuneration was over \$150,000, then disclosure would be required for only the five highest earners.

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## **11. Bond for Persons Handling Money (s. 28 - 29)**

The regulation proposes to increase the minimum amount of the required bond to the lesser of \$5 million (currently \$1 million) or the amount of the credit union's assets.

In addition, the regulation would require the bond to provide coverage for dishonesty and to satisfy specific conditions. The insurer would be required to provide the Superintendent and DICO with copies of any notice given to the credit union concerning termination or potential termination of coverage.

A transition period would be provided so that these proposals would come into effect after December 31, 2009.

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## **12. Ancillary Business (s. 30)**

When proclaimed, certain permitted activities in the CUCPA would be moved to the regulations as permitted ancillary businesses. The proposed regulation includes the list of permitted activities and ancillary businesses.

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## **13. Security Interests (s. 47)**

The proposed regulation would set out the circumstances in which a credit union could create a security interest in its property.

A credit union would be permitted to grant a security interest in its property to secure a debt, including any obligations to settle for payment items in accordance with the rules of the Canadian Payments Association, provided that all the secured debts of the credit union do not exceed 15 per cent of its total

assets. Only debts to banks, loan or trust corporations, leagues, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, or the Credit Union Central of Canada would qualify. The security agreement would need to specifically identify assets and could not create a general charge against the business of the credit union. The total value of all secured property could not exceed 25 per cent of its total assets.

The proposed regulation would permit a credit union to create a general security interest in its property in limited circumstances. The debt could only be owed to a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, La Caisse centrale Desjardins du Québec or the Credit Union Central of Canada. DICO could, at its option, require the security interest to be assigned to DICO if the credit union came under administration, or if DICO were appointed as liquidator. If the security interest were assigned to DICO, then DICC would provide the secured party with payment in full of the indebtedness secured by the agreement, a guarantee of payment, or a partial payment and a guarantee of payment for the balance.

As a transitional measure, a credit union would be given at least 90 days after the provisions come into force to pay the outstanding balance of non-complying indebtedness and discharge the security interest or to amend the terms of a non-complying security agreement.

A credit union would not be able to create a security interest in assets used to satisfy the requirements for adequate liquidity.

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#### **14. Classes of Loans (s. 48 - 57)**

When proclaimed, an amendment to the CUCPA will repeal the requirement for a credit union to obtain a lending licence and to make loans in accordance with its lending licence. Consequently, the proposed regulation would no longer prescribe classes of lending licences.

However, the proposed regulation would define classes of loans for the purposes of the lending limits to be set out in the regulation.

It is proposed that the definition of commercial loan be amended to include the supply of funds for use in automated bank machines that are not owned and operated by the credit union. The proposed definition would be consistent with the accounting treatment mandated by the Superintendent for these types of transactions.

## **15. Lending Limits (s. 57)**

The current lending limits for class 1 and 2 credit unions would remain unchanged, except for the following proposals.

Under the draft regulation, a credit union could not lend more than 50 per cent of its regulatory capital to an agency of the Government of Canada, an agency of the government of a province or territory of Canada, or a school board. This limit would apply to both class 1 and class 2 credit unions.

In addition, it is proposed that the lending limits for class 1 and class 2 credit unions would not apply in respect of a loan made to the Government of Canada or the government of a province or territory of Canada.

## **16. Eligible Investments (s. 59 - 60)**

It is proposed that a class 1 credit union could only invest in or hold the types of securities and property listed as eligible investments.

A class 2 credit union would be permitted to hold any asset authorized by its investment policies so long as the investment met the conditions set out in the regulation and was not otherwise prohibited.

The following restrictions would apply to both class 1 and class 2 credit unions.

- total book value of all investments in improved real estate in Canada could not exceed 100 per cent of the credit union's regulatory capital
- no investments would be permitted in any commodity, including metals, food, and grain, that trades on a commodity exchange

In addition, the total book value of all investments in widely-distributed shares or participating shares could not exceed 25 per cent of regulatory capital for class 1 credit unions or 70 per cent of regulatory capital for class 2 credit unions.

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## **17. Financial Statements (s. 83)**

It is proposed that the financial statements of a credit union disclose:

- the amount and composition of tier 1 and tier 2 capital and the percentage of regulatory capital held
- the amount of each type of asset held for liquidity purposes
- the amount of outstanding loans in each class of loan described in section 48 of the draft regulation
- the amount of impaired loans, allowance for impairment, and charge for impairment
- the value of marketable securities that are held to maturity, available for sale, and held for investment

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## **18. Leagues (s. 94)**

The proposed regulation would permit an exception to the 10 per cent single investment limit for leagues. La Fédération des caisses populaires de l'Ontario would be permitted to invest 25 per cent of its deposits and regulatory capital in La Fédération des caisses Desjardins du Québec.

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## **19. DICO Investments (s. 100 - 101)**

It is proposed that DICO be permitted to invest any funds not required in carrying out its objectives in securities in which a class 2 credit union may invest its funds.

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## **20. Continuance (s. 107 - 111)**

When proclaimed, an amendment to the CUCPA will permit an entity incorporated under the laws of another jurisdiction in Canada, or under another Ontario Act, to be continued under the CUCPA, and for an Ontario credit union to transfer to another jurisdiction or another Ontario Act.

The proposed regulation sets out documents that would need to be provided and conditions that would need to be met in order to obtain approval for the continuance.

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## **21. Consumer Complaints (s. 115 - 116)**

The proposed regulation would require a credit union to designate a complaints officer who would be responsible for reporting to the credit union's board at least once annually on complaints received from members and depositors and how they were resolved.

A credit union would be required to inform its members of the name and contact information for the complaints officer. It would also be required to respond in writing to all written complaints and keep records related to these complaints for six years from the date of the original complaint.

The credit union would be required to inform a complainant that he or she may refer his or her complaint to the Superintendent if the person is not satisfied with the proposed solution and if the complaint relates to a contravention of the CUCPA or regulations.

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## **22. Administrative Penalties (s. 117)**

When amended, the CUCPA will enable the Superintendent or DICO to impose an administrative penalty if a person or entity contravened certain requirements of the CUCPA. The draft regulation proposes a fixed-rate administrative penalty of \$100 per day for a class 1 credit union and \$250 per day for a class 2 credit union for the contraventions listed in the CUCPA (e.g., failure to file reports and provide required information). The regulation would also outline the list of factors that the Superintendent or DICO would be required to consider when deciding whether or not to impose an administrative penalty.

## **IV. COST OF BORROWING AND DISCLOSURE TO BORROWERS**

The draft regulation describes how the cost of borrowing is to be calculated by a credit union and disclosed to a borrower. It also proposes mandatory disclosure requirements and rules about advertisements related to the cost of borrowing. The draft regulation reflects the federal-provincial-territorial harmonization agreement that was created through a process of public consultations and intergovernmental negotiation. The proposals related to credit unions were previously consulted on by the Ministry of Finance.

## **V. CONSULTATION DRAFT OF GENERAL REGULATION**

### **PROPOSED ONTARIO REGULATION**

to be made under the

### **CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994**

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**PART I**  
**INTERPRETATION**

**Definitions**

1. (1) In this Regulation,

“agricultural loan” means an agricultural loan described in section 49; (“*prêt agricole*”)

“authorized types of insurance” means the types of insurance listed in subsection 34 (1); (“*types d’assurance autorisés*”)

“bridge loan” means a bridge loan described in section 50; (“*prêt-relais*”)

“*Capital Adequacy Guideline for Ontario’s Credit Unions and Caisses Populaires*” means the publication with that title that is published in *The Ontario Gazette* by the Corporation, as the publication may be amended from time to time; (“*Lignes directrices relatives à la suffisance du capital des caisses populaires et credit unions de l’Ontario*”)

“class 1 credit union” means a credit union that is not a class 2 credit union; (“*caisse de catégorie 1*”)

“class 2 credit union” means a credit union that, according to section 2, is a class 2 credit union; (“*caisse de catégorie 2*”)

“commercial loan” means a commercial loan described in section 51; (“*prêt commercial*”)

“guarantee” includes the issuance of a letter of credit; (“*garantie*”)

“institutional loan” means an institutional loan described in section 52; (“*prêt institutionnel*”)

“insurer” means an insurer licensed under the *Insurance Act*; (“*assureur*”)

“participating share” means a share of a body corporate that carries the right to participate in the earnings of the body corporate to an unlimited degree and to participate in a distribution of the remaining property of the body corporate on dissolution; (“*action participante*”)

“personal loan” means a personal loan described in section 53; (“*prêt personnel*”)

“regulatory capital” means regulatory capital as determined under section 16; (“*capital réglementaire*”)

“residential mortgage loan” means a residential mortgage loan described in section 54. (“*prêt hypothécaire résidentiel*”)

“residential property” means an individual condominium residential unit or a building with one to four units where at least one half of the floor area of the building is utilized as one or more private residential dwellings; (“*propriété résidentielle*”)

“risk weighted assets” means the amount of the risk weighted assets as determined under section 17; (“*actif à risques pondérés*”)

“total assets” means total assets as determined under section 15. (“*actif total*”)

(2) For the purposes of this Regulation, a lodgement of title is not a mortgage.

(3) For the purposes of this Regulation, two or more persons are connected persons if they satisfy the conditions prescribed in section 66.

### **Class 2 credit unions**

2. (1) A credit union is a class 2 credit union if either of the following circumstances exist at any time after January 31, 2007:

1. The total assets of the credit union as set out in the audited financial statements of the credit union that were placed before its members at

the most recent annual meeting are greater than or equal to \$50 million.

2. The credit union makes one or more commercial loans.

(2) A credit union becomes a class 2 credit union under subsection (1) on the first day on which either of the circumstances described in subsection (1) exist.

(3) A credit union that changes the terms and conditions of a commercial loan made on or before January 31, 2007 or refinances such a loan in any other way shall be deemed, for the purposes of paragraph 2 of subsection (1), to have made a commercial loan on the date of the change or refinancing.

(4) A credit union also becomes a class 2 credit union if, upon application by the credit union to the Corporation, the Corporation is satisfied that,

- (a) the credit union has established the policies required by section 189 of the Act with respect to investment and lending;
- (b) those policies are appropriate for the size and complexity of the credit union;
- (c) the credit union is in compliance with the Corporation's by-laws, including the by-law prescribing standards of sound business and financial practices; and
- (d) the credit union is in compliance with the minimum capital requirements that would apply under this Regulation if the credit union were a class 2 credit union.

(5) Once a credit union becomes a class 2 credit union, it remains a class 2 credit union in perpetuity.

**Widely-distributed security**

3. (1) A security is widely-distributed,

- (a) if it is listed or posted for trading on a recognized stock exchange; or
- (b) if a prospectus relating to the issuance of the security is filed under the laws of a province or a jurisdiction outside Canada.

(2) A debt obligation is widely-distributed if no prospectus is required in respect of its distribution under the laws of a province or a jurisdiction outside Canada and,

- (a) at least 90 per cent of the maximum authorized principal of the debt obligation is held by one or more persons other than the credit union making the loan and its subsidiaries and,
  - (i) the debt obligation is issued to at least 25 persons other than the credit union and its subsidiaries within six months after the day on which the first of the debt obligations is issued, or
  - (ii) the debt obligations are issued on a continuous basis and there are, on average, at least 25 holders other than the credit union and its subsidiaries; or
- (b) when the debt obligation is issued, it meets at least three of the following criteria:
  1. Its initial term is one year or less.
  2. It is rated by a rating agency.
  3. It is distributed through a person authorized to trade in securities.
  4. It is distributed in accordance with an offering circular or memorandum or a similar document relating to the distribution of securities.

## **PART II** **ESTABLISHING A CREDIT UNION**

### **Articles of incorporation**

**4. (1)** The following information must be set out in the articles of incorporation of a credit union:

1. Its name.
2. The address of its head office and the name of the municipality or township in Ontario where its principal place of business is located.
3. The minimum and maximum number of directors.
4. The full name, date of birth, citizenship or landed immigrant status and residential address of each director.
5. The classes and maximum number, if any, of shares other than membership shares that the credit union is authorized to issue.

6. The rights, privileges, restrictions and conditions, if any, attaching to each class of shares.

7. The board's authority with respect to any class of shares that may be issued in series.

(2) Articles filed when a credit union is first incorporated must also set out the full name, date of birth and residential address of each incorporator.

(3) Articles approved by the Minister before March 1, 1995 shall be deemed to comply with subsections (1) and (2).

**Name**

5. The Credit Union Central of Canada is a prescribed person for the purposes of section 20 of the Act.

**PART III**  
**MEMBERSHIP**

**Trusts for named beneficiaries**

6. For the purposes of clause 39 (1) (d) of the Act, deposits made in accordance with the following provisions are prescribed:

1. Subsections 188 (6), (7) and 227 (1) of the *Business Corporations Act*.
2. Section 39 of the *Cemeteries Act*.
3. Subsection 33 (2) of Regulation 69 of the Revised Regulations of Ontario, 1990 made under the *Charitable Institutions Act*.
4. Subsection 17 (4) of Regulation 74 of the Revised Regulations of Ontario, 1990 made under the *Collection Agencies Act*.
5. Subsection 81 (4) of the *Condominium Act, 1998*.
6. Subsection 143 (5) of the *Corporations Act*.
7. Subsection 18 (1) of Regulation 470 of the Revised Regulations of Ontario, 1990 made under the *Funeral Directors and Establishments Act*.

8. Subsection 53 (1) of Regulation 637 of the Revised Regulations of Ontario, 1990 made under the *Homes for the Aged and Rest Homes Act*.
9. Subsection 50 (1) of Ontario Regulation 188/08 and subsection 34 (1) of Ontario Regulation 189/08, both made under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.
10. Subsection 27 (1) of the *Real Estate and Business Brokers Act, 2002*.
11. Subsection 16 (4) of Regulation 991 of the Revised Regulations of Ontario, 1990 made under the *Registered Insurance Brokers Act*.
12. Rule 3.3.2 of the Mutual Fund Dealers Association of Canada Rules as governed by section 21.1 of the *Securities Act*.
13. Rule 1200.3 of the Investment Industry Regulatory Organization of Canada Dealer Member Rules as governed by section 21.1 of the *Securities Act*.
14. Subsection 27 (3) of Ontario Regulation 26/05 made under the *Travel Industry Act, 2002*.

**Payments re deceased members**

7. (1) For the purposes of paragraph 1 of subsection 42 (2) of the Act, the prescribed amount is \$50,000.

(2) For the purposes of paragraph 2 of subsection 42 (2) of the Act, the prescribed amount is \$50,000.

**PART IV  
CAPITAL STRUCTURE**

**Number of shares**

8. For the purposes of subsection 52 (2) of the Act and despite any limit set out in the by-laws of a credit union, the prescribed limit on the number of membership shares that may be issued to a member of the credit union is the sum of,

- (a) the minimum number of membership shares required under the by-laws of the credit union; and

- (b) the number of membership shares that would be issued by the credit union for an additional consideration of \$1,000, as determined at the time the membership shares are issued.

#### **Membership share certificate**

**9.** For the purposes of subsection 52 (6) of the Act, a membership share certificate must include the following information and statements on its face:

1. The name of the credit union as it appears in the articles.
2. The name of each person to whom the certificate is issued.
3. A statement indicating that the credit union is governed by the *Credit Unions and Caisses Populaires Act, 1994*.
4. A statement indicating that the certificate represents membership shares in the credit union and indicating the number of shares.
5. A statement indicating that there may be a lien on the shares in favour of the credit union for indebtedness to it.
6. A statement indicating that the shares are not guaranteed or insured by the Corporation or another public agency.
7. A statement indicating that the certificate is not transferable.

#### **Offering statement**

**10. (1)** For the purposes of subsection 77 (2) of the Act, the following information is prescribed as information that an offering statement must contain:

1. The name of the credit union.
2. The credit union's date of incorporation as set out in the articles or, in the case of an amalgamated credit union, its date of amalgamation as set out in its certificate of amalgamation.
3. The address of the credit union's head office.
4. The name of each of the credit union's directors and officers, the municipality in which each resides, the principal occupation of each of them and the title of each officer.
5. A description of the business carried on by the credit union and its subsidiaries, if any, and the business each of them intends to carry on.

6. The details of the capital structure of the credit union.
7. A description of the material characteristics of the securities being offered.
8. The details of the use to which the proceeds from the sale of the securities will be put.
9. If the offering is being made in connection with a plan of reorganization, a purchase and sale or an amalgamation, a description of the general effect of these proposed changes and when they will be made.
10. The details of the method of selling the securities and of any commission payable or discount allowable on the sale. If the securities are being sold through an underwriter, include the underwriter's name and the details of the underwriter's obligation to take up and pay for the securities. If the securities are being sold by another method, include separate descriptions of the method of distribution of securities underwritten, securities under option and securities being sold on a best efforts basis and also include the amount of any minimum subscription.
11. A description of the market on which the securities may be sold. If there is no market, a description of how the securities will be redeemed.
12. The name of each transfer agent and registrar and the location of each register of transfer.
13. The details of any securities or other obligations ranking ahead of the securities being offered.
14. A description of any material legal proceeding to which the credit union or its subsidiary is a party.
15. A description of any material interest of a director, officer or employee of the credit union or its subsidiary in the operations of the credit union generally or in the securities being offered, including the following:
  - i. Particulars of any options to purchase shares of the credit union that are held by a director or officer and the name of any director or officer who holds such options.

- ii. Particulars of any options to purchase shares of the credit union that are held by all other employees as a group.
- 16. A description of every material contract entered into within two years before the date of the offering statement and a description of any contract entered into, if the contract has a bearing on the securities issue.
- 17. A description of the risk factors of the credit union and the risks associated with the securities being offered.
- 18. A description, to the extent reasonably practicable, of any substantial variations in the operating results of the credit union during the three years before the date of the offering statement and the financial statements that show the variations.
- 19. The amount of any dividends, patronage returns, allocations or other distributions paid, declared or accumulated but unpaid by the credit union during the five years before the date of the offering statement.
- 20. The name and address of the credit union's auditor.
- 21. A description of any other material facts. If there are no other material facts, the offering statement must contain the following statement: "There are no other material facts relating to this issue of securities".
- 22. Such other information as is required by the *Offering Statement Guideline for Credit Unions and Caisses Populaires* published in *The Ontario Gazette* by the Superintendent, as it may be amended from time to time.

(2) The offering statement must include the following documents:

- 1. The audited financial statements of the credit union that were placed before the members at the most recent annual meeting and signed by the chair of the board and the chief executive officer of the credit union.
- 2. Interim unaudited financial statements, reviewed by a person licensed under the *Public Accounting Act, 2004*, for the period ending not more than 90 days before the date on the offering statement, if the audited financial statements required under paragraph 1 are in respect of a period ending more than 90 days before the date on the offering statement

3. If a report, opinion or statement prepared by a person is used in the offering statement, a document signed by the person indicating that the person consents to the use of the report, opinion or statement.
4. A copy of the board resolution approving the offering, certified by the corporate secretary to be a true copy.

(3) If the credit union was incorporated within 90 days before the date on the offering statement, the offering statement must include pro forma financial statements, including projected balance sheets and income statements of the credit union for at least the first three fiscal years of the credit union instead of the financial statements required under paragraphs 1 and 2 of subsection (2).

(4) If the credit union was amalgamated within 90 days before the date on the offering statement, the offering statement must include, instead of the financial statements required under paragraphs 1 and 2 of subsection (2),

- (a) the audited financial statements of each predecessor credit union that were placed before its members at the most recent annual meeting of the predecessor credit union;
- (b) a statement of the assets and liabilities of the amalgamated credit union as of the date of the certificate of amalgamation; and
- (c) pro forma financial statements, including projected balance sheets and income statements of the amalgamated credit union for at least the first three fiscal years after the amalgamation.

(5) The offering statement must include the following statements in conspicuous, bold type on the front cover, in the same language as is used in the statement:

1. No official of the Government of the Province of Ontario has considered the merits of the matters addressed in the offering statement.
2. The securities being offered are not guaranteed by the Deposit Insurance Corporation of Ontario or any similar public agency.

(6) If there is no market on which the securities may be sold, the offering statement must include a statement to that effect in bold type on the front cover.

**Notice of offering**

**11.** (1) A credit union may give any person or entity a notice respecting an offering after the offering statement is filed and before the Superintendent issues a receipt.

(2) The notice must contain the following information:

1. A detailed description of the security that the credit union proposes to issue.
2. The price of the security, if the price has been determined.
3. The name and address of a person from whom the securities may be purchased.

(3) The notice must include the following statements in conspicuous, bold type on the front cover, in the same language as is used in the offering statement:

1. This is not an offer to sell the securities described in this document.
2. The securities described in this document cannot be sold until after the Superintendent of Financial Services issues a receipt for an offering statement. You are advised to read the offering statement approved by the Superintendent, because the terms and conditions may be changed significantly.
3. The Superintendent may refuse to issue a receipt, in which case the securities described in this document will not be offered for sale.

**Statement of material change**

**12.** The following information must be set out in a statement of material change respecting an offering statement by a credit union:

1. The name of the credit union.
2. The date on which the receipt for the offering statement was issued.
3. The date on which the material change occurred.
4. A description of the material change.

**Transfer of securities issued after receipt for an offering statement**

13. For the purposes of subsection 74.1 (1) of the Act, the Corporation and a league are prescribed as persons to whom a security issued under circumstances described in clause 75 (1) (a) of the Act may be transferred.

**PART V  
CAPITAL AND LIQUIDITY**

**Adequate capital**

14. (1) This section sets out the criteria for determining if a credit union is maintaining adequate capital as required by section 84 of the Act.

(2) A class 1 credit union has adequate capital if its regulatory capital is at least 5 per cent of its total assets.

(3) A class 2 credit union has adequate capital for a financial year if the following conditions are satisfied:

1. Its regulatory capital expressed as a percentage of its total assets is at least 4 per cent for a financial year ending on or after January 1, 2009.
2. Its regulatory capital, expressed as a percentage of its risk weighted assets, is at least 8 per cent.

**Total assets**

15. (1) The total assets of a credit union is the amount calculated using the formula,

$$A - B$$

in which,

"A" is the amount of all the credit union's assets, and

"B" is the sum of the following amounts as they would appear in the financial statements of the credit union prepared as of the date of the calculation:

- i. Goodwill.
- ii. Identified intangible assets other than goodwill that have been purchased directly or acquired in conjunction with or arising from the acquisition of a business, including, but not limited to, trademarks, core deposit intangibles, mortgage servicing rights and purchased credit card relationships.

- iii. Income tax recoverable that cannot be realized through a loss carry-back to earlier years.
- iv. Deferred tax debits that will not be realized in the following fiscal year.
- v. Investments in subsidiaries that are financial institutions.
- vi. Any other amount set out in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.

(2) For the purposes of subsection (1), the following rules apply:

1. The amount of an asset is its value as it would appear in the financial statements of the credit union prepared as of the date of the calculation.
2. Provisions or allowances for losses of a general nature must be deducted from the most closely applicable class of assets.
3. An investment in the shares of a subsidiary must be calculated using the equity method of accounting described in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.
4. Cash deposits in a financial institution must be offset against overdrafts with the same financial institution.

#### **Regulatory capital**

**16.** (1) The regulatory capital of a credit union is the amount calculated using the formula,

$$C + D$$

in which,

"C" is the amount of the credit union's Tier 1 Capital as determined under subsection (2)

and "D" is the amount of the credit union's Tier 2 Capital as determined under subsection (3).

(2) The Tier 1 capital of a credit union is the amount calculated using the formula,

**E - B**

in which,

"E" is the sum of the following amounts as they would appear in the financial statements of the credit union prepared as of the date of the calculation:

- i. Membership shares.
- ii. Retained earnings.
- iii. Contributed surplus.
- iv. Patronage shares, other than patronage shares that are redeemable within the following twelve-month period.
- v. Qualifying shares described in subsection (4), other than qualifying shares that are redeemable within the following twelve-month period.
- vi. Accumulated net after tax unrealized loss on available-for-sale equity securities reported in Other Comprehensive Income.

and "B" has the same meaning as in subsection 15 (1).

(3) The Tier 2 capital of a credit union is the lesser of the Tier 1 capital amount determined under subsection (2), and the sum of the following amounts as they would appear in the financial statement of the credit union prepared as of the date of the calculation:

1. Patronage shares that are redeemable within the following twelve-month period.
2. Qualifying shares described in subsection (4) that are redeemable within the following twelve-month period.
3. Subordinated indebtedness that,
  - (i) cannot be redeemed or purchased for cancellation in the first five years after it is issued, and
  - (ii) is not convertible into or exchangeable for a security other than a qualifying share.

4. The amount of any general loan loss allowance, excluding any specific loan loss allowance up to a maximum of 0.75 percent of total assets and, if applicable, 1.25 per cent of risk weighted assets of the credit union.
5. Accumulated net after tax unrealized gain on available-for-sale equity securities reported in Other Comprehensive Income.
6. Any other amount set out in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.

(4) For the purposes of this section qualifying shares are fully paid shares other than membership shares and patronage shares issued by the credit union, but only if the following conditions are met:

1. Any rights or special rights as to the payment of dividends to the holders of the shares are non-cumulative.
2. Any rights or special rights, including the right to redeem the shares or call on the credit union to purchase or otherwise acquire the shares, are restricted so that the credit union is not required to redeem, purchase or otherwise acquire the shares of that class at a rate of more than 10 per cent of the outstanding shares during any one-year period.
3. The shares cannot be redeemed or purchased for cancellation in the first five years after their issue.
4. The shares do not give their holders the right to convert the shares into, or exchange the shares for, shares of any class of shares other than a class of shares described in paragraph 1, 2 or 3 that are issued to raise capital.

#### **Risk weighted assets of a credit union**

17. (1) The amount of a credit union's risk weighted assets is the amount calculated using the formula,

$$A + B + C$$

in which,

"A" is the sum of all amounts each of which is calculated by multiplying the value of an asset of the credit union by the percentage described in subsection (2), (3), (4), (5), (6) or (7), as the case may be, that applies to that asset,

"B" is the amount of the credit union's applicable operational risk as determined under subsection (8), and

"C" is the amount of the credit union's applicable interest rate risk as determined under subsection (10).

(2) The percentage is zero per cent for the following types of assets:

1. Cash.
2. Claims against, or guaranteed by, the Government of Canada or an agency of the Government.
3. Claims against, or guaranteed by, the government of a province or territory of Canada
4. Claims fully secured by collateral consisting of cash or securities issued by the Government of Canada or the government of a province or territory of Canada.
5. Residential mortgage loans described in paragraph 2 of section 54.
6. The portion of a residential mortgage loan described in paragraph 3 of section 54, to the extent that the benefits payable under the policy insuring the loan have a backstop guarantee provided by the Government of Canada.
7. Mortgage-backed securities that are guaranteed by the Canada Mortgage and Housing Corporation and secured against residential mortgages.
8. Investments in bodies corporate that are accounted for in the credit union's financial statements using the equity method.
9. Any deductions from regulatory capital, including goodwill.
10. Deposits in a league, Central 1 Credit Union or La Fédération des caisses Desjardins du Québec.
11. Interest rate contracts with a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, a financial institution or another equivalent entity approved in writing by the Corporation.

(3) The percentage is 20 per cent for the following types of assets:

1. Cheques and other items in transit.
2. Claims against or guaranteed by a municipality in Canada.
3. Claims against or guaranteed by a school board, university, hospital or social service provider in Canada that receives, as its primary source of funding, regular government financial support.
4. Deposits in a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a corporation registered under the *Loan and Trust Corporations Act* or a corporation to which the *Trust and Loan Companies Act* (Canada) or similar legislation of another province or territory of Canada applies.
5. Commercial paper, bankers' acceptances, bankers' demand notes and similar instruments guaranteed by a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a corporation registered under the *Loan and Trust Companies Act* or a corporation to which the *Trust and Loan Companies Act* (Canada) or similar legislation of another province or territory of Canada applies.
6. The value attributed to any off balance sheet exposure relating to assets of the credit union listed in paragraphs 1 to 5, as calculated in accordance with the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.

(4) The percentage is 35 per cent for the following types of assets:

1. Residential mortgage loans described in paragraph 1 of section 54 that are not 90 days or more past due.
2. Mortgage-backed securities that are fully and specifically secured by residential mortgage loans, other than mortgage-backed securities described in paragraph 7 of subsection (2).
3. The value attributed to any off balance sheet exposure relating to assets of the credit union listed in paragraphs 1 and 2, as calculated in accordance with the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.

(5) The percentage is 75 per cent for the following types of assets:

1. Personal loans.

2. Agricultural loans.
3. Commercial loans made to a person where the sum of all commercial loans made to that person and to any connected persons does not exceed the lesser of 0.035 per cent of the credit union's total assets and \$1.25 million.
4. The value attributed to any off balance sheet exposure relating to assets of the credit union listed in paragraphs 1 to 4, as calculated in accordance with the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.

(6) The percentage is 100 per cent for the following types of assets:

1. Commercial loans, other than commercial loans described in paragraph 3 of subsection (5).
2. All assets not described in subsection (2), (3), (4) or (5).
3. Residential mortgage loans described in paragraph 1 of section 54 that are 90 days or more past due.
4. The portion of a residential mortgage loan described in paragraph 3 of section 54 that does not have a backstop guarantee provided by the Government of Canada, if the insurer does not have a credit rating described in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.
5. The value attributed to any off balance sheet exposure relating to assets of the credit union listed in paragraphs 1 and 2, as calculated in accordance with the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.

(7) If a person to whom a commercial loan described in paragraph 1 of subsection (6) is made has a credit rating described in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*, the percentage determined in accordance with that Guideline applies, instead of the percentage specified in subsection (6), in respect of the commercial loan.

(8) If an insurer who insures a residential mortgage loan described in paragraph 3 of section 54 has a credit rating described in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*, the percentage determined in accordance with that Guideline applies, instead of the percentage specified in subsection (6), in respect of the portion of the loan that does not have a backstop guarantee by the Government of Canada.

(9) Unless another amount is approved by the Corporation, a credit union's applicable operational risk is the amount calculated using the formula,

$$D/0.08$$

in which,

“D” is the amount of the credit union's capital charge for operational risk as determined under subsection (9).

(9) A credit union's capital charge for operational risk is the amount calculated using the formula,

$$\frac{E + F + G}{H} \times 0.15$$

in which,

“E” is the greater of,

- (a) the amount of the credit union's interest income less its interest expenses for its most recently ended financial year plus all of its other non-interest income for its most recently ended financial year, and
- (b) zero,

“F” is the amount that would be determined under the definition of “E” if that definition applied to the credit union's second most recently ended financial year,

“G” is the amount that would be determined under the definition of “E” if that definition applied to the credit union's third most recently ended financial year, and

“H” is the greater of,

- (a) the number of years in which the amounts determined under the definitions of “E”, “F” and “G” exceed zero, and
- (b) one.

(10) Unless another amount is approved by the Corporation, a credit union's applicable interest rate risk is the amount calculated using the formula,

$$J/0.08$$

in which,

"J" is the amount of the credit union's capital charge for interest rate risk as determined under subsection (11).

(11) A credit union's capital charge for interest rate risk is the amount calculated using the formula,

$$K \times 0.15$$

in which,

"K" is the amount of the credit union's exposure, determined in accordance with the techniques referred to in paragraph 2 of subsection 70 (1), to interest rate risk.

#### **Forming of groups relating to capital requirements**

**18.** (1) The following are requirements for an agreement under subsection 84 (3) of the Act for credit unions and a league to form a group for the purposes of assisting the credit unions in satisfying the requirements of section 84 of the Act relating to capital:

1. The agreement must provide that if an order is issued under clause 86 (1) (a) of the Act against a credit union that is in the group, the league will, within forty-five days after the order is issued, invest sufficient monies in the credit union, by purchasing preferred shares or subordinated debt of the credit union, so that the credit union satisfies the requirements of section 84 of the Act relating to capital.
2. The agreement must provide that the credit unions that are in the group agree to jointly and severally indemnify the league for the amount invested under paragraph 1.
3. The agreement must provide that a credit union can withdraw from the group only on eighteen months notice to the league and the other credit unions in the group and only if all the credit unions in the group have satisfied the requirements of section 84 of the Act relating to capital throughout the twelve month period preceding the withdrawal.

(2) The following are prescribed grounds for the Corporation to revoke its approval under subsection 84 (4) of the Act:

1. The league that is in the group fails to comply with the obligation set out in paragraph 1 of subsection (1).

2. The league that is in the group fails to comply with an order of the Corporation under subsection 85 (4), 86(1), 187 (1), 189 (4), 191 (2), 197.0.1 (1), 200 (1), 200 (2), 200 (3), 200 (4), 200 (5), 201.1 (2), 202.1 (1), 204 (7), 231 (2), 234 (1), 235 (1) or 240 (1) of the Act.
3. The league that is in the group is subject to an order under subsection 279 (1) or 294 (1) of the Act.

#### **Adequate liquidity for class 1 credit unions**

**19.** (1) This section sets out the requirements for adequate liquidity for class 1 credit unions under section 84 of the Act.

(2) A class 1 credit union shall maintain eligible assets for adequate liquidity whose value is at least 7 per cent of the total deposits and borrowings of the credit union, except as provided under subsection (3).

(3) The percentage specified in subsection (2) shall be 5 percent instead of 7 per cent if the credit union has a line of credit that satisfies the following:

1. The line of credit is with a financial institution, Credit Union Central of Canada, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or La Caisse centrale Desjardins du Québec.
2. The line of credit is for an amount that is equal to or more than 2 per cent of the credit union's deposits.
3. The line of credit is revocable only after at least 30 days notice to the credit union.
4. The terms of the line of credit are set out in writing.

(4) For the purposes of subsection (2), the following are eligible assets for adequate liquidity:

1. Cash.
2. A deposit that matures in 100 days or less that is with,
  - i. a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada),
  - ii. a corporation registered under the *Loan and Trust Corporations Act*,

- iii. a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or La Caisse centrale Desjardins du Québec, or
- iv. Credit Union Central of Canada.

3. A treasury bill or other debt obligation issued by the government of Canada or a province that matures in 100 days or less.
4. A bankers' acceptance or discounted note issued by a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada, if,
  - i. the acceptance or note matures in one year or less, and
  - ii. the acceptance or note has a rating of at least A (low), as classified by the Dominion Bond Rating Service or an equivalent rating as set out in the *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*.
5. A debt obligation of a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, La Caisse centrale Desjardins du Québec or Credit Union Central of Canada that matures in 100 days or less.
6. A debt obligation of the Corporation.

(5) If an employer has deducted an amount from the pay of a member to be remitted to the credit union and the credit union has credited the amount to the member's account but has not yet received the amount from the employer, an amount equal to the amount that is in the process of being remitted to the credit union shall be deemed to be an eligible asset for adequate liquidity for the purposes of subsection (2).

#### **Adequate liquidity for class 2 credit unions**

**20.** (1) This section sets out the requirements for adequate liquidity for class 2 credit unions under section 84 of the Act.

(2) A class 2 credit union shall establish and maintain prudent levels and forms of liquidity that are sufficient to meet its cash flow needs, including depositor withdrawals and all other obligations as they come due.

(3) An asset shall not be used to satisfy the requirements for adequate liquidity for a class 2 credit union unless the asset is authorized for that purpose

under the capital and liquidity policies of the credit union established under section 85 of the Act.

**Encumbered asset**

21. An encumbered asset shall not be used to satisfy the requirements for adequate liquidity unless the asset is encumbered only by a security interest in favour of the Corporation.

**Failure to meet requirements for adequate liquidity**

22. (1) The following apply if, for a period of five consecutive days (excluding Saturdays, Sundays and holidays), a credit union does not meet the requirements for adequate liquidity under section 84 of the Act:

1. The credit union shall not make a loan or an investment until the credit union again meets the requirements for adequate liquidity.
2. The credit union shall immediately submit to the Superintendent and to the Corporation a report addressing the following matters:
  - i. the circumstances that led to the failure to meet the requirements for adequate liquidity,
  - ii. the steps the credit union has taken to meet the requirements for adequate liquidity, and
  - iii. when the credit union will again meet the requirements for adequate liquidity.

(2) For the purposes of paragraph 1 of subsection (1), changing the terms and conditions of a loan or refinancing a loan in any other way shall be deemed to be making a loan.

**Provision for doubtful loans and required reserves**

23. (1) For the purposes of section 90 of the Act, the prescribed monthly provision for doubtful loans is the provision required by the Corporation in its by-laws.

(2) For the purposes of section 90 of the Act, the prescribed reserves are those required by By-law No. 6 of the Corporation.

## PART VI GOVERNING THE CREDIT UNION

### Mandatory by-laws

24. The following are prescribed for the purposes of subsection 105 (2) of the Act as matters required to be governed by the by-laws of every credit union, to the extent the matters are not provided for by the Act or the regulations or set out in the articles of the credit union:

1. Admission to membership in the credit union and any fees for admission.
2. Withdrawal, suspension or expulsion from membership in the credit union.
3. The allotment of shares, including the maximum number that may be allotted to a member, the payment for shares, the redemption or transfer of shares and the recording of information about these matters.
4. The procedure for deciding how to distribute the profits of the credit union.
5. If the credit union is a member of a league and assesses its own members to pay for the cost of membership in the league, the procedure for assessing credit union members' annual assessment to be paid to the league.
6. The language or languages in which the credit union will carry on business.
7. Mandatory procedures governing the operation of the credit union.
8. The types of loans that the credit union is authorized to make.
9. The time, place and notice to be given for a members' meeting, the record date for determining who is entitled to vote at such a meeting, and the quorum for such a meeting.
10. The time, place and notice to be given for a board meeting.
11. The time for, and manner of, electing directors and committee members.

12. The term of office of directors and of committee members, and the procedure for setting their remuneration.
13. The appointment and removal of officers and employees of the credit union, any security that they are required to give the credit union and the procedures for establishing their remuneration.

**Frequency of board meetings**

**25.** The board of a credit union shall meet at least quarterly during each financial year of the credit union.

**Duties of audit committee**

**26.** The following are prescribed for the purposes of section 126 as duties of the audit committee of a credit union:

1. Review and make recommendations to the board about the terms of the engagement letter and the remuneration of the auditor.
2. Review with the auditor the scope and plan of an audit.
3. Discuss with the auditor the audit findings, any restrictions on the scope of the auditor's work and any problems that the auditor experienced in performing the audit.
4. Review and make recommendations to the board about any management letters, recommendations and reports by the auditor about the business or financial statements of the credit union and any response to them by management of the credit union.
5. Report to the board on any conflict between the auditor and management that the committee is unable to resolve within a reasonable time.
6. Review the annual audited financial statements and make such recommendations to the board as the committee considers appropriate.
7. Review the audited financial statements of each subsidiary of the credit union.
8. Review the effectiveness of the credit union's internal audit practices and make recommendations to the board to address any deficiencies.
9. Review the organization and assess the degree of independence of the credit union's internal auditors, if any, including their mandate, work

plans and any problems that they experience or issues they raise relating to the performance of audits.

10. Review findings and recommendations of the internal auditors concerning the accounting practices and internal control practices and review the responses by the management of the credit union to any significant or material deficiencies.
11. Report to the board any significant changes in the accounting principles and practices followed by the credit union.
12. Recommend to the board arrangements to safeguard the credit union's assets, to ensure the timeliness, accuracy and reliability of accounting data, to maintain adherence to the lending and investment policies and procedures and to provide for other matters concerning the financial policies of the credit union.
13. Review any report about the affairs of the credit union made by the Superintendent or the Corporation, monitor the implementation of any significant recommendations and report to the board on the progress of the implementation.
14. Review the credit union's policies and procedures governing the way in which it meets the requirements under the Act and any other applicable legislation.
15. Review material legal proceedings to which the credit union is a party.
16. Assess whether the staff of the credit union is adequate to fulfil the credit union's accounting and financial responsibilities.
17. Monitor the adherence of the credit union's directors, officers and employees to the credit union's standards of business conduct and ethical behaviour.
18. Review the credit union's disaster recovery and business continuity plans.
19. Review, at least annually, the effectiveness of the committee in carrying out its duties.

(2) The report of the audit committee required under subsection 125 (9) of the Act must contain the following information for the year to which the report relates:

1. The number of meetings held by the committee during the year.
2. A summary of the significant activities undertaken by the committee during the year and a description of the actual and expected results.
3. Confirmation that the committee is conducting its affairs in accordance with the Act and the regulations.
4. Information on any failure of the credit union to implement or complete the implementation of any significant recommendation previously made by the audit committee.
5. Details of any other matter that is required to be disclosed pursuant to the Act or Regulations.

(3) The audit committee may, in its annual report, report on such other matters as the committee considers appropriate.

**Remuneration reported in financial statements**

27. (1) For the purposes of subsection 140 (5) of the Act, the prescribed information about the remuneration paid during a year to the officers and employees of a credit union that must be disclosed in the credit union's annual audited financial statements is the following information with respect to each officer and employee of the credit union whose total remuneration for the year was over \$150,000:

1. The name of the officer or employee.
2. The title of the officer or position of the employee.
3. The total amount of salary received.
4. The total amount of bonuses received.
5. The monetary value of benefits received.

(2) Despite subsection (1), if there are more than five officers and employees of a credit union whose total remuneration for the year was over \$150,000, subsection (1) only applies in respect of the five officers and employees with the highest total remuneration for the year.

(3) In this section,

“total remuneration” means, in respect of an officer or employee for a year, the total of the amounts described in paragraphs 3, 4 and 5 of subsection (1) for the year.

**Bond for persons handling money**

28. (1) For the purposes of subsection 151 (2) of the Act, from the day this section comes into force, the minimum amount of the bond is the lesser of \$1 million and the amount of the credit union's total assets as shown on the audited financial statements of the credit union placed before the members at the most recent annual meeting.

(2) After December 31, 2009, the minimum amount of the bond is the lesser of \$5 million and the amount of the credit union's total assets as shown on the audited financial statements of the credit union placed before the members at the most recent annual meeting.

**Bond**

29. (1) For the purposes of subsection 151 (2) of the Act, after December 31, 2009, the bond shall provide for coverage for dishonesty and shall satisfy all of the following conditions:

1. The bond shall provide coverage for the direct loss of property of the insured resulting from any dishonest or fraudulent act of any employee, director or committee member, committed alone or in collusion with others.
2. The coverage may be limited to a stated maximum amount and may exclude indirect or consequential losses but the coverage shall not exclude losses of interest other than accrued and unpaid interest.
3. If the bond requires the existence of manifest intent to cause a loss to be insured, it shall also provide that concealment of a dishonest or fraudulent act shall be deemed to be manifest intent for the purposes of the bond.
4. The period during which coverage may be terminated for an act of dishonesty or fraud is limited to the current policy period, including any extended discovery period during which a claim may be made under the bond.
5. The insurer shall undertake to provide the Superintendent and the Corporation with copies of any notification sent to the insured concerning termination or potential termination of coverage.

## **PART VII** **RESTRICTIONS ON BUSINESS POWERS**

### **ANCILLARY BUSINESSES**

#### **Ancillary businesses**

**30.** For the purposes of subsection 174 (1) of the Act, credit union may engage in the following trades or businesses:

1. Operating a post office.
2. Operating a motor vehicle licence bureau.
3. Acting as an agent to receive payments for utility bills, realty tax, personal income tax and for similar transactions.
4. Providing facsimile transmission facilities.
5. Promoting merchandise and services to its members or the holder of any payment, credit or charge card issued by the credit union, its subsidiaries or affiliates.
6. Engaging in the sale of,
  - i. tickets, including lottery tickets, on a non-profit, public service basis in connection with special, temporary and infrequent non-commercial celebrations or projects that are of local, municipal, provincial or national interest, .
  - ii. transit fares, and
  - iii. tickets in respect of a lottery sponsored by the federal government or a provincial or municipal government or an agency of any such government.

### **FINANCIAL SERVICES**

#### **Prohibition re financial services**

**31.** For the purposes of subsection 174 (3) of the Act, a credit union shall not directly provide the following financial services:

1. Services provided by a factoring corporation described in subsection 67 (2).
2. Services provided by an investment counselling and portfolio management corporation described in subsection 67 (5).

3. Services provided by a mutual fund corporation described in subsection 67 (6).
4. Services provided by a mutual fund distribution corporation described in subsection 67 (7).
5. Services provided by a securities dealer described in subsection 67 (10).

**Same**

32. (1) For the purposes of subsection 174 (3) of the Act, a credit union or subsidiary must not enter into a financial lease agreement or a conditional sales agreement unless the agreement meets the following requirements:

1. The agreement concerns personal property,
  - i. selected by the lessee or purchaser and acquired by the credit union or subsidiary at the request of the lessee or purchaser, or
  - ii. previously acquired by the credit union or subsidiary under another financial lease agreement or conditional sales agreement.
2. The primary purpose of the agreement is to extend credit to the lessee or purchaser.
3. The agreement is for a fixed term.

(2) A credit union or subsidiary must not direct a customer or prospective customer to particular dealers for the sale of personal property under a conditional sales agreement.

(3) A financial lease agreement or conditional sales agreement must yield,

- (a) a reasonable rate of return; and
- (b) a return that at least equals the investment by the subsidiary in the property that is the subject of the agreement, taking into account in the case of a financial lease agreement,
  - (i) rental charges payable or paid by the lessee,
  - (ii) tax benefits to the credit union or subsidiary, and

- (iii) the guaranteed purchase or resale price, if any, for the property at the expiry of the agreement or the lesser of the estimated residual value of the property and 25 per cent of the original acquisition cost to the credit union or subsidiary.

(4) The financial lease agreement or conditional sales agreement must set out the responsibilities of the credit union or its subsidiary respecting the benefit of the warranties, guarantees and undertakings made by the manufacturer or supplier of the property.

(5) The aggregate estimated residual value of all property held by a credit union and its subsidiaries under financial lease agreements must not exceed 10 per cent of the aggregate original acquisition cost.

(6) This section does not apply with respect to agreements in which the credit union or its subsidiary is the lessee or conditional purchaser.

## **NETWORKING**

### **Networking**

33. (1) Subject to sections 34 to 42, for the purposes of subsection 174 (4) of the Act, the following are the prescribed persons or entities in respect of which a credit union may act as agent:

1. A financial institution.
2. The Corporation.
3. Credit Union Central of Canada.
4. Central 1 Credit Union.
5. La Fédération des caisses Desjardins du Québec or La Caisse centrale Desjardins du Québec.
6. A financial leasing corporation described in subsection 67 (3), whether or not it is a subsidiary of the credit union.
7. A mutual fund corporation described in subsection 67 (6), whether or not it is a subsidiary of the credit union.
8. A mutual fund distribution corporation described in subsection 67 (7), whether or not it is a subsidiary of the credit union.

(2) A credit union may act as agent for the Corporation only with respect to the administration of deposits under a deposit administration agreement.

(3) For the purposes of subsection 174 (4) of the Act, a credit union may refer its members to a person or entity listed in paragraphs 1 to 8 of subsection (1), a syndicating credit union or a syndicating league for the purpose of obtaining a syndicated loan referred to in section 55.

## **AUTHORIZED TYPES OF INSURANCE**

### **Authorized types of insurance**

**34.** (1) For the purpose of subsection 176 (1) of the Act, a credit union may administer any of the following types of insurance policies offered by insurers that are licensed to carry on business offering that type of insurance policy:

1. Insurance related to a credit card or charge card issued by the credit union.
2. Creditors' disability insurance.
3. Creditors' life insurance.
4. Creditors' insurance for loss of employment.
5. Creditors' vehicle inventory insurance.
6. Export credit insurance.
7. Group accident and sickness insurance.
8. Group life insurance.
9. Mortgage insurance.
10. Travel insurance.

(2) A credit union that, on March 1, 1995, administers an insurance policy other than one authorized under subsection (1) may continue to administer the policy with respect to a person to whom coverage is provided on that date.

(3) For the purposes of subsection (1), "insurance related to a credit card or charge card" refers to a policy of an insurer that provides the types of insurance described in this subsection to the holder of a credit card or charge card as a feature of the card without request and without an individual assessment of risk. The policy may provide insurance against the loss of, or damage to, goods

purchased with the card. The policy may also provide insurance against any loss arising from a contractual liability assumed by the holder when renting a vehicle, if the rental is paid for with the card. The policy may also provide for the extension of a warranty provided by the manufacturer of the goods purchased with the card.

(4) For the purposes of subsection (1), "creditors' disability insurance" refers to a group insurance policy that will pay to the credit union all or part of the amount of a debt owed to the credit union by a debtor. Payment will be made only in the event of bodily injury to or the illness or disability of,

- (a) the debtor or his or her spouse, if the debtor is an individual;
- (b) an individual who is a guarantor of all or part of the debt;
- (c) a director or officer of a debtor that is a body corporate; or
- (d) an individual who is essential to the ability of a debtor that is an entity to meet the debtor's financial obligations to the credit union.

(5) For the purposes of subsection (1), "creditors' life insurance" refers to a group insurance policy that will pay to the credit union all or part of the amount of a debt owed to the credit union by a debtor or all or part of the amount of the credit limit under a line of credit for a debt relating to a small business, a farm, a fishery or a ranch. Payment will be made only in the event of the death of,

- (a) the debtor or his or her spouse, if the debtor is an individual;
- (b) an individual who is a guarantor of all or part of the debt;
- (c) a director or officer of a debtor that is a body corporate; or
- (d) an individual who is essential to the ability of a debtor that is an entity to meet the debtor's financial obligations to the credit union.

The small business must be a business that is or, if it were incorporated, would be a small business corporation within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada). The line of credit must be a commitment to lend amounts up to a predetermined limit that does not involve a predetermined repayment schedule. The credit limit must not exceed the reasonable credit needs of the debtor or the lending limits of the credit union.

(6) For the purposes of subsection (1), "creditors' insurance for loss of employment" refers to a policy of an insurer that will pay to the credit union all or part of the amount of a debt owed to the credit union. The insurance policy will be

made without an individual assessment of risk. Payment will be made only in the event that,

- (a) the debtor becomes involuntarily unemployed, if the debtor is an individual; or
- (b) an individual who is a guarantor of any portion of the debt becomes involuntarily unemployed.

(7) For the purposes of subsection (1), "creditors' vehicle inventory insurance" refers to a policy of an insurer that provides insurance against direct and accidental loss or damage to vehicles held in stock for display and sale purposes by a debtor of the credit union. Some or all of the vehicles must have been financed by the credit union.

(8) For the purposes of subsection (1), "export credit insurance" refers to a policy of an insurer that provides insurance to an exporter of goods or services against a loss incurred by the exporter because goods or services are not paid for.

(9) For the purposes of subsection (1), "group accident and sickness insurance" refers to a group insurance policy between an insurer and the credit union. The policy provides accident and sickness insurance severally for persons who individually hold certificates of insurance. The insurance must be restricted to the credit union's employees, its members and the employees of its subsidiaries.

(10) For the purposes of subsection (1), "group life insurance" refers to a group insurance policy between an insurer and the credit union. The policy provides life insurance severally for persons who individually hold certificates of insurance. The insurance must be restricted to the credit union's employees, its members and the employees of its subsidiaries.

(11) For the purposes of subsection (1), "mortgage insurance" refers to a policy of an insurer that provides insurance to the credit union against a loss caused by a default under a loan by the credit union secured by a mortgage on real estate or an interest in real estate. The debtor must be an individual.

(12) For the purposes of subsection (1), "travel insurance" refers to either of the following:

1. A policy of an insurer that provides the types of insurance described in this paragraph to an individual in respect of a trip by him or her away from the place where he or she ordinarily resides. The insurance is provided without an individual assessment of risk. The policy may

provide insurance against a loss that results from the cancellation or interruption of the trip. It may provide insurance against the loss of or damage to personal property that occurs while the individual is on the trip. It may provide insurance against a loss caused by the delayed arrival of personal baggage while the individual is on the trip.

2. A group insurance policy that provides the types of insurance described in this paragraph to an individual in respect of a trip by him or her away from the province in which he or she ordinarily resides. The policy may provide insurance against expenses incurred during the trip that result from the individual's illness or disability that occurs during the trip. It may provide insurance against expenses incurred during the trip that result from bodily injury to or the death of the individual caused by an accident during the trip. It may provide insurance against expenses incurred by the individual for dental care required as a result of an accident during the trip. It may provide insurance in the event that the individual dies during the trip, against expenses incurred for the return of his or her remains to the place where he or she ordinarily resided before death, or for travel expenses incurred by a relative who must travel to identify the remains. The policy may provide that the insurer undertakes to pay money in the event of the individual's illness or disability that occurs during the trip or bodily injury to or the death of the individual caused by an accident during the trip.

#### **Group insurance policy**

**35.** (1) A credit union may administer a group insurance policy described in section 34 only for its members, its employees or the employees of its subsidiaries.

(2) A group insurance policy is a contract of insurance between an insurer and the credit union that provides insurance severally for a group of identifiable persons who individually hold certificates of insurance.

#### **Advice about insurance**

**36.** (1) A credit union may provide advice about an authorized type of insurance.

(2) A credit union may provide advice in respect of another type of insurance only if,

- (a) the advice is general in nature; and

- (b) the advice is not about a specific risk, a particular proposal respecting life insurance or a particular insurance policy, insurer, agent, broker or service.

(3) A credit union may provide services in respect of an authorized type of insurance.

(4) A credit union may provide services in respect of another type of insurance only if the credit union does not refer a person to a particular insurer, agent or broker.

## **RESTRICTIONS ON INSURANCE**

### **Restriction on insurance**

**37.** A credit union shall not underwrite insurance.

### **Same**

**38.** (1) A credit union shall not act as an agent for any person in the placing of insurance.

(2) A credit union shall not lease or provide space in its head office or any other of its offices to a person placing insurance.

### **Separate and distinct premises**

**39.** (1) A credit union that carries on business in premises adjacent to an office of an insurer, agent or broker shall clearly indicate to its customers that the credit union's premises are separate and distinct from the premises of the insurer, agent or broker.

(2) The premises of the credit union must be separate and distinct from the premises of the insurer, agent or broker.

### **Telecommunications device**

**40.** A credit union shall not provide a telecommunications device that is primarily for the use of its customers to link a customer with an insurer, agent or broker.

### **Promotion of insurer**

**41.** (1) A credit union shall not promote an insurer, agent or broker unless,

- (a) the insurer, agent or broker deals only in authorized types of insurance; or
- (b) the promotion takes place outside the head office and any other office of the credit union, and is directed to,

- (i) all of the holders of credit cards or charge cards issued by the credit union to whom statements of account are mailed regularly,
- (ii) all of the credit union members who are individuals and to whom statements of account are mailed regularly, or
- (iii) the general public.

(2) A credit union shall not promote an insurance policy of an insurer, agent or broker, or a service provided in respect of such a policy, unless,

- (a) the policy is of an authorized type of insurance or the service is in respect of such a policy;
- (b) the policy is to be provided by a corporation without share capital (other than a mutual insurer or a fraternal benefit society) that carries on business without pecuniary gain to its members and the policy provides insurance to an individual in respect of the risks covered by travel insurance;
- (c) the service is in respect of a policy described in clause (b); or
- (d) the promotion takes place outside the head office of the credit union and any other office of the credit union, and is directed to,
  - (i) all of the holders of credit cards or charge cards issued by the credit union to whom statements of account are mailed regularly,
  - (ii) all of the credit union members who are individuals and to whom statements of account are mailed regularly, or
  - (iii) the general public.

(3) A credit union may exclude the following persons from a promotion described in clause (1) (b) or (2) (d):

1. Persons in respect of whom the promotion would contravene an Act of Parliament or of the legislature of a province.
2. Persons who have notified the credit union in writing that they do not wish to receive promotional material from the credit union.

3. Persons who hold a credit card or charge card issued by the credit union in respect of which the account is not in good standing.

**Sharing of information with insurer**

**42.** (1) Except as permitted by this section, a credit union shall not directly or indirectly give an insurer, agent or broker information about,

- (a) a member of the credit union;
- (b) an employee of the member;
- (c) if the member is an entity with its own members, a member of the entity; or
- (d) if the member has partners, a partner of the member.

(2) A credit union shall not permit its subsidiary to give directly or indirectly to an insurer, agent or broker information that the subsidiary receives from the credit union.

(3) A credit union shall not permit a subsidiary that is a loan or trust corporation to give directly or indirectly to an insurer, agent or broker information about,

- (a) a customer of the subsidiary;
- (b) an employee of the customer;
- (c) if the customer is an entity with members, a member of the customer; or
- (d) if the customer has partners, a partner of the customer.

(4) A credit union or a subsidiary that is a loan or trust corporation may give information to an insurer, agent or broker if,

- (a) the credit union or subsidiary has established procedures to ensure that the insurer, agent or broker does not use the information to promote himself, herself or itself or an insurance policy or services respecting an insurance policy; and
- (b) the insurer, agent or broker has given an undertaking to the credit union or subsidiary, in a form acceptable to the Superintendent, that he, she or it will not use the information for such a purpose.

(5) In this section,

"loan or trust corporation" means a loan or trust corporation incorporated under an Act of the Legislature of a province.

## **FIDUCIARY ACTIVITIES**

### **Fiduciary activities**

**43.** For the purposes of section 177 of the Act, the only fiduciary activity a credit union may undertake is acting as a trustee with respect to,

- (a) deposits under registered retirement savings plans, registered retirement income funds and registered education savings plans under the *Income Tax Act (Canada)*;
- (b) trust funds established under the *Cemeteries Act (Revised)* or any other funds in respect of which a credit union is expressly permitted or required, under an Act or regulation, to act as a trustee; and
- (c) loan proceeds and security under loan participation agreements and syndication agreements.

## **GUARANTEES**

### **Guarantees**

**44.** For the purposes of subsection 178 (3) of the Act, the following are the prescribed conditions and restrictions on a guarantee:

1. The guarantee must have a fixed term.
2. The credit union shall not guarantee an obligation, other than its own obligation or one of its subsidiary, unless the credit union has received security at least equal to the amount of the obligation guaranteed.

### **Limit on amount of guarantee**

**45.** For the purposes of subsection 178 (4) of the Act, the prescribed percentage is 10 per cent.

## PART VIII INVESTMENT AND LENDING

### INTERPRETATION

#### Interpretation

46. For the purposes of this Part, regulatory capital shall be determined under section 16 using the audited financial statements of the credit union that were placed before its members at the most recent annual meeting.

## SECURITY INTERESTS IN CREDIT UNION PROPERTY

#### Security interests in credit union property

47. (1) This section sets out, for the purposes of section 184 of the Act, the circumstances in which a credit union may create a security interest in property of the credit union.

(2) A credit union may create a security interest in personal property of the credit union if the property, together with any other property of the credit union subject to a security interest under this subsection, has an aggregate value of less than the greater of

- (a) \$25,000; and
- (b) one per cent of the credit union's total assets, as set out in the audited financial statements of the credit union that were placed before its members at the most recent annual meeting.

(3) A credit union may create a security interest in property of the credit union if the following conditions are satisfied:

1. The security interest is granted to secure a debt, including any obligation of the credit union to an entity listed in paragraph 2 that is a member of the Canadian Payments Association to settle for payment items of the credit union in accordance with the by-laws and rules of the Canadian Payments Association, which together with other debts for which the credit union has granted a security interest does not exceed 15 per cent of the credit union's total assets, as set out in the audited financial statements of the credit union that were placed before its members at the most recent annual meeting.
2. The debt is owed to,
  - i. a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada),

- ii. a corporation registered under the *Loan and Trust Corporations Act*,
- iii. a league, Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or
- iv. Credit Union Central of Canada.

3. The security agreement under which the security interest is granted provides that the security interest is granted over specifically identified assets and does not create a general charge against the business and undertaking of the credit union.
4. The security interest is limited by its terms to property with a value, together with the total value of all property subject to a security interest under this subsection, that does not exceed 25 per cent of the value of the credit union's total assets as set out in the audited financial statements of the credit union that were placed before its members at the most recent annual meeting.
5. The security agreement under which the security interest is granted provides that if the value of the property subject to a security interest under this subsection exceeds at any time the limit established in paragraph 4, the security interest does not apply to the portion of the property, or to the portion of the proceeds from the sale of the property, that exceed the limit, regardless of whether the debt in respect of which the security was granted has been repaid in full at that time.

(4) A credit union may create a general security interest in property of the credit union, except property required to satisfy the requirements of adequate liquidity under section 84 of the Act, if the following conditions are satisfied:

1. The debt is owed to,
  - i. a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or La Caisse centrale Desjardins du Québec, or
  - ii. Credit Union Central of Canada.
2. The security agreement under which the security interest is granted provides that if the Corporation orders the credit union to be subject to administration under section 294 of the Act or the Corporation is appointed as liquidator of the assets of the credit union, the Corporation may require that the security agreement be assigned to

the Corporation, if the Corporation delivers one of the following to the secured party:

- i. Payment in full of the outstanding balance, as of the close of business on the day of the assignment, of the indebtedness of the credit union secured by the agreement.
- ii. A guarantee of payment for the outstanding balance, as of the close of business on the day of the assignment, of the indebtedness of the credit union secured by the agreement.
- iii. Partial payment of the outstanding balance of the indebtedness of the credit union secured by the agreement and a guarantee of payment for the portion of the outstanding balance not paid as of the close of business on the day of the assignment.

(5) A guarantee of payment made under subparagraph ii or iii of paragraph 2 of subsection (4) must provide the following:

1. The Corporation shall pay the outstanding balance of the indebtedness, including interest at the interest rate provided for in the debt instrument that forms a part of the security agreement prior to any default under that instrument, by the fifth anniversary of the guarantee, or such earlier date as the Corporation may designate.
2. The secured party is not required to exhaust its right to recourse against the credit union or any other person before being entitled to payment or performance by the Corporation under the guarantee.
3. The obligations of the Corporation under the guarantee are continuing, unconditional and absolute, and will not be released, discharged, diminished, limited or otherwise affected by a change affecting the credit union.

(6) A credit union may create a security interest in property of the credit union in favour of the Corporation without satisfying the requirements of subsection (2), (3) or (4).

(7) If on the day this section comes into force, a credit union has indebtedness that is subject to a security interest that, if created after this section comes into force, would not comply with this section, the credit union shall,

(a) pay the outstanding balance of the indebtedness and discharge the security interest within 90 days or such longer period as the Corporation considers appropriate; or

(b) amend the terms of the security agreement so as to comply with this section within 90 days or such longer period as the Corporation considers appropriate.

## **CLASSES OF LOANS**

### **Classes of loans**

**48.** The following are prescribed as classes of loans:

1. Agricultural loans.
2. Bridge loans.
3. Commercial loans.
4. Institutional loans.
5. Personal loans.
6. Residential mortgage loans.
7. Syndicated loans.
8. Loans to unincorporated associations.

### **Agricultural loan**

**49.** An agricultural loan is a loan that is made for the purposes of financing,

- (a) the production of cultivated or uncultivated field-grown crops;
- (b) the production of horticultural crops;
- (c) the raising of livestock, fish, poultry or fur-bearing animals; or
- (d) the production of eggs, milk, honey, maple syrup, tobacco, wood from woodlots or fibre or fodder crops.

### **Bridge loan**

**50.** A bridge loan is a loan to an individual made under the following circumstances:

1. The loan is for the purchase of residential property in which the purchaser will reside.
2. The term of the loan is not greater than 120 days.

3. The funds from the sale of another residential property owned by the individual will be used to repay the loan.
4. The credit union must receive a copy of the executed purchase and sale agreement for both properties before the loan is made.
5. The conditions of each of the purchase and sale agreements must be satisfied before the loan is made.
6. The loan is fully secured by a mortgage on the residential property being sold or, before the loan is made, the borrower's solicitor has given the credit union an irrevocable letter of direction from the borrower stating that the funds from the sale of the residential property being sold will be remitted to the credit union.

#### **Commercial loan**

**51.** (1) A commercial loan is a loan, other than any of the following types of loans, that is made for any purpose:

1. An agricultural loan, a bridge loan, an institutional loan, a personal loan, a residential mortgage loan.
2. A loan to an unincorporated association.
3. A loan that consists of deposits made by the credit union with a financial institution, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
4. A loan that is fully secured by a deposit with,
  - i. a financial institution, including the credit union making the loan,
  - ii. Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or
  - iii. Credit Union Central of Canada.
5. A loan that is fully secured by debt obligations that are guaranteed by,
  - i. a financial institution other than the credit union making the loan,
  - ii. Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or

- iii. Credit Union Central of Canada.
- 6. A loan that is fully secured by a guarantee of,
  - i. a financial institution other than the credit union holding the loan,
  - ii. Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or
  - iii. Credit Union Central of Canada.
- 7. An investment in a debt obligation that is,
  - i. fully guaranteed by a financial institution other than the credit union making the loan,
  - ii. fully secured by deposits with a financial institution, including the credit union making the loan, or
  - iii. fully secured by debt obligations that are fully guaranteed by a financial institution other than the credit union making the loan.
- 8. An investment in a debt obligation issued by the Government of Canada, the government of a province or territory of Canada or a municipality or by an agency of such a government or municipality.
- 9. An investment in a debt obligation guaranteed by, or fully secured by securities issued by, the Government of Canada, the government of a province or territory of Canada or a municipality or by an agency of such a government or municipality.
- 10. An investment in a debt obligation issued by a league, Central 1 Credit Union or La Fédération des caisses Desjardins du Québec.
- 11. An investment in a debt obligation that is widely-distributed.
- 12. An investment in shares or ownership interests that are widely-distributed.
- 13. An investment in a participating share.
- 14. An investment in shares of a league, Central 1 Credit Union or La Fédération des caisses Desjardins du Québec.

(2) A commercial loan includes the supply of funds for use in automated bank machines that are not owned and operated by the credit union.

**Institutional loan**

52. An institutional loan is a loan given to,

- (a) the Government of Canada;
- (b) the government of a province or territory of Canada;
- (c) an agency of the Government of Canada;
- (d) an agency of the government of a province or territory of Canada;
- (e) a municipality or an agency of one;
- (f) a school board; or
- (g) an entity funded primarily by the Government of Canada, the government of a province or territory of Canada or a municipality.

**Personal loan**

53. A personal loan is a loan given to,

- (a) an individual for personal, family or household use; or
- (b) an individual or an entity for any other use if the loan does not exceed \$25,000 and if the total outstanding amount of such loans to him, her or it and to connected persons does not exceed \$25,000.

**Residential mortgage loan**

54. A residential mortgage loan is a loan that is secured by a mortgage on residential property that is occupied by the borrower and to which any of the following apply:

1. The amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the residential property, does not exceed 80 per cent of the value of the property when the loan is made.
2. The loan is insured under the *National Housing Act* (Canada), or guaranteed or insured by a government agency.
3. The loan is insured by an insurer licensed to undertake mortgage insurance.

### **Syndicated loan**

**55.** A syndicated loan is a loan including any related credit facilities made under a syndicated loan agreement by a credit union, a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada acting as the syndicating credit union where:

1. The parties to the syndicated loan agreement are the borrower, the syndicating credit union and one or more of the following:
  - i. Another credit union or its subsidiary or affiliate.
  - ii. A league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
  - iii. A financial institution other than a securities dealer.
2. Each of the parties to the syndicated loan agreement, other than the borrower, agrees to contribute a specified portion of the loan and to be bound by the terms and conditions of the syndicated loan agreement.
3. The syndicating credit union contributes at least 10 per cent of the loans, including any related credit facilities, and underwrites, disburses and administers them on behalf of the parties to the syndicated loan agreement.

### **Loan to an unincorporated association**

**56.** A loan to an unincorporated association is a loan to an unincorporated association or organization,

- (a) that is not a partnership registered under the *Business Names Act*; and
- (b) that is operated on a non-profit basis for educational, benevolent, fraternal, charitable, religious or recreational purposes.

## **LENDING LIMITS**

### **Lending limits to a person or connected persons**

**57.** (1) A class 1 credit union whose total assets, as set out in the audited financial statements of the credit union that were placed before its members at the most recent annual meeting, are described in a row in Column 1 of the Table to this section shall not make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans made by the credit union to the person and any connected persons would exceed the amount of the total lending limit set out in the same row of Column 2 of the Table.

(2) Subject to subsections (3) and (4), a class 2 credit union shall not make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans made to the person and any connected persons would exceed 25 per cent of the credit union's regulatory capital.

(3) If the person to whom the loan is to be made is listed in clause 52 (c), (d) or (f), the class 2 credit union shall not make the loan if, as a result of making the loan, the total amount of all outstanding loans made to the person and any connected persons would exceed 50 per cent of the credit union's regulatory capital.

(4) If the person to whom the loan is made is listed in clause 52 (a) or (b), the lending limit set out in subsection (2) does not apply.

(5) For the purposes of this section, the total amount of all outstanding loans made by a credit union to a person and any connected persons excludes the portion, if any, of a loan that,

- (a) is insured under the *National Housing Act* (Canada) or by an insurer licensed to undertake mortgage insurance;
- (b) is guaranteed by,
  - (i) a federal, provincial or territorial government of Canada,
  - (ii) an agent of a government described in subclause (i), or
  - (iii) the Corporation.
- (c) is secured by deposits of the borrower with the credit union.

(6) For the purposes of this section, changing the terms and conditions of a loan or refinancing a loan in any other way shall be deemed to be making a loan.

**TABLE**  
**LENDING LIMITS TO A PERSON OR CONNECTED PERSONS —**  
**CLASS 1 CREDIT UNIONS**

Column 1	Column 2
Total assets of credit union	Total lending limit to a person or connected persons
Less than \$500,000	Greater of 100% of regulatory capital and \$60,000
\$500,000 or more but less than \$1 million	Greater of 100% of regulatory capital and \$100,000
\$1 million or more but less than \$2 million	Greater of 80% of regulatory capital and \$125,000
\$2 million or more but less than \$3 million	Greater of 80% of regulatory capital and \$155,000
\$3 million or more but less than \$5 million	Greater of 70% of regulatory capital and \$185,000
\$5 million or more but less than \$10 million	Greater of 60% of regulatory capital and \$235,000
\$10 million or more but less than \$20 million	Greater of 50% of regulatory capital and \$295,000
\$20 million or more but less than \$50 million	Greater of 30% of regulatory capital and \$400,000

**Limits on loans of same class to a person**

58. (1) A class 1 credit union shall not make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans of the same class, as set out in Column 1 of the Table to this section, made by the credit union to the same person and any connected persons would exceed the amount calculated by multiplying the percentage set out in the same row of Column 2 of the Table by the credit union's total lending limit as determined under section 57.

(2) A class 2 credit union shall establish prudent lending limits for each class of loans that it is authorized by its by-laws to make.

(3) For the purposes of this section and for the purposes of the lending limits established by a class 2 credit union,

- (a) a loan in an amount that exceeds the lending value of any property that is given as security for the loan, as determined in accordance with the credit union's lending policies, is an under-secured loan;
- (b) a loan in an amount that does not exceed the lending value of the property that is given as security for the loan, as determined in accordance with the credit union's lending policies, is a fully secured loan; and
- (c) a loan to a person includes a loan to two or more persons for which they are jointly and severally liable.

(4) For the purposes of this section, the total amount of outstanding loans to a person and any connected persons does not include the portion, if any, of a loan that,

- (a) is insured under the *National Housing Act* (Canada), guaranteed by a government agency or insured by an insurer licensed to undertake mortgage insurance; or
- (b) is secured by the borrower's deposits with the credit union.

(5) For the purposes of this section, changing the terms and conditions of a loan or refinancing a loan in any other way shall be deemed to be making a loan.

**TABLE**  
**LIMITS ON LOANS OF SAME CLASS — CLASS 1 CREDIT UNIONS**

Column 1	Column 2
Class of loan	Percentage of total lending limit
Agricultural loan	0%
Bridge loan	100%
Institutional loan	50%
Loan to unincorporated association or organization	5%
Personal loan, fully secured	20%
Personal loan, unsecured or under-secured	6%
Residential mortgage loan	100%
Loan under a syndicated loan agreement	0%

### **ELIGIBLE INVESTMENTS**

#### **Eligible investments for class 1 credit unions**

59. (1) The following types of securities and property are prescribed, for the purposes of section 198 of the Act, as the types of securities and property that a class 1 credit union may invest in or hold, subject to the conditions indicated:

1. Debt obligations that are fully guaranteed by,
  - i. a financial institution other than the credit union,
  - ii. Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or
  - iii. Credit Union Central of Canada.
2. Debt obligations that are fully secured by deposits with,
  - i. a financial institution other than the credit union,
  - ii. Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or
  - iii. Credit Union Central of Canada.

3. Debt obligations that are fully secured by other debt obligations that are fully guaranteed by,
  - i. a financial institution other than the credit union,
  - ii. Central 1 Credit Union or La Fédération des caisses Desjardins du Québec, or
  - iii. Credit Union Central of Canada.
4. Debt obligations issued by the Government of Canada, the government of a province or territory of Canada, an agency of the Government of Canada or the government of a province or territory, a municipality or a local board or agent of a municipality.
5. Debt obligations that are guaranteed by, or fully secured by securities issued by, the Government of Canada, the government of a province or territory of Canada, an agency of the Government of Canada or the government of a province or territory, a municipality or a local board or agent of a municipality.
6. Debt obligations issued by a school board or by a municipality for the purposes of a school board.
7. Derivative instruments that the credit union purchases to manage interest rate risk.
8. Debt obligations that are widely distributed.
9. Debt obligations of a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
10. Mortgages upon improved real estate in Canada.
11. Improved real estate in Canada, but only if the credit union occupies or intends to occupy the real estate for its own use.
12. Improved real estate in Canada acquired,
  - i. to protect the credit union's investment in a mortgage on the real estate, or
  - ii. in satisfaction of debts contracted in the course of the credit union's business.

13. Securities that are secured by mortgages.
14. Shares of a body corporate or ownership interests in an unincorporated association that are widely distributed.
15. Participating shares of a body corporate.
16. Shares of a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
17. Fully-paid shares or units of a mutual fund or corporation incorporated to offer participation in an investment portfolio.
18. Loans that consist of deposits made by the credit union with a financial institution, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
19. Loans that are fully secured by a deposit with a financial institution, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
20. Loans that are fully secured by debt obligations that are guaranteed by,
  - i. a financial institution other than a credit union holding the loan, or
  - ii. Central1Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
21. Loans that are fully secured by a guarantee of,
  - i. a financial institution other than a credit union holding the loan, or
  - ii. Central1Credit Union, La Fédération des caisses Desjardins du Québec or Credit Union Central of Canada.
22. Investments not authorized under paragraphs 1 to 21 and not prohibited under any other provision of the Act or this regulation, so long as the total book value of those investments does not exceed 25 per cent of the credit union's regulatory capital.

(2) Paragraph 22 of subsection (1) does not apply so as to,

(a) enlarge the authority conferred under the Act or this regulation to invest in mortgages or to lend on the security of real estate; or

(b) affect the limits established under the Act or this regulation on investments in real estate.

(3) A class 1 credit union shall not make a direct investment in, or purchase of, any commodity including metals, food and grain, that trades on a commodity exchange.

(4) The total book value of all investments by a class 1 credit union in improved real estate in Canada must not exceed 100 per cent of the credit union's regulatory capital.

(5) For the purposes of subsection (4), the total book value does not include the book value of real estate acquired by the credit union,

(a) to protect its investment in a mortgage on the real estate; or

(b) in satisfaction of debts previously contracted in the course of the credit union's business.

(6) The total book value of all investments by the credit union in shares referred to in paragraphs 14 and 15 of subsection (1) must not exceed 25 per cent of the credit union's regulatory capital.

#### **Eligible investments for class 2 credit unions**

**60.** (1) A class 2 credit union may hold as an investment any asset authorized by its investment policies, other than a prohibited investment, subject to the conditions set out in the Act and this regulation.

(2) A class 2 credit union shall not invest in a derivative instrument unless it is purchased for the purposes of managing interest rate risk.

(3) A class 2 credit union shall not make a direct investment in, or purchase of, any commodity including metals, food and grain that trades on a commodity exchange.

(4) The total book value of all investments by a class 2 credit union in the following types of shares must not exceed 70 per cent of the credit union's regulatory capital:

1. Shares of a body corporate or ownership interests in an unincorporated association that are widely distributed.

2. Participating shares of a body corporate.

(5) The total book value of all investments by a class 2 credit union in improved real estate in Canada must not exceed 100 per cent of the credit union's regulatory capital.

(6) For the purposes of subsection (5), the total book value does not include the book value of real estate acquired by the credit union,

- (a) to protect its investment in a mortgage on the real estate; or
- (b) in satisfaction of debts previously contracted in the course of the credit union's business.

**Prescribed conditions re improved real estate**

61. (1) For the purposes of section 198 of the Act, the following are prescribed conditions that must be satisfied if a credit union invests in improved real estate, either by purchasing it or by way of a loan secured by a mortgage on it:

- 1. The amount advanced on a mortgage plus all outstanding mortgages with an equal or prior claim against the real estate must not exceed the lending value of the real estate.
- 2. Despite paragraph 1, the amount may exceed the lending value of the real estate if the loan secured by the mortgage is approved or insured under the *National Housing Act* (Canada).
- 3. Despite paragraph 1, the amount may exceed the lending value of the real estate,
  - i. if the excess amount is guaranteed or insured through an agency of the Government of Canada or of the government of a province or territory of Canada, or
  - ii. if the excess amount is insured by an insurer licensed to undertake mortgage insurance.

(2) If a credit union or a subsidiary acquires or has the right to possess or sell real estate for either of the following purposes and then sells it and takes back a mortgage on the sale, the investment in the mortgage need not meet the requirements of subsection (1):

- 1. To protect its investment in a mortgage on the real estate.

2. In satisfaction of debts previously contracted in the course of the credit union's business,

(3) Subsection (1) does not apply with respect to a mortgage taken back by the credit union on the sale of property held by the credit union for its own use.

(4) A credit union shall not retain real estate acquired under circumstances described in subsection (2) for more than two years without obtaining the approval of the Corporation.

(5) For the purposes of subsection (1),

"lending value" means, in respect of real estate, 80 per cent of the market value of the real estate but, if the credit union considers a lesser percentage appropriate in the circumstances under its investment and lending policies, the lending value is that lesser percentage of the market value of the real estate.

#### **Definition**

**62.** For the purposes of sections 59, 60 and 61,

"improved real estate" means real estate,

- (a) on which there exists a building capable of being used for residential, financial, commercial, industrial, educational, professional, institutional, religious, charitable or recreational purposes,
- (b) on which such a building is being built or is about to be built,
- (c) on which farming operations are being conducted, or
- (d) that is vacant land restricted by law to being used for commercial, industrial or residential purposes.

#### **Prescribed conditions re body corporate**

**63.** (1) For the purposes of section 198 of the Act, it is a prescribed condition that a credit union not directly or indirectly invest in the shares of a body corporate if, as a result of the investment,

- (a) the voting rights attached to the aggregate of any voting shares of the body corporate beneficially owned by the credit union and by any entities it controls would exceed 30 per cent of the voting rights attached to all of the outstanding voting shares of the body corporate; or

(b) the aggregate of any shares of the body corporate beneficially owned by the credit union and by any entities it controls would represent ownership of more than 30 per cent of the shareholders' equity of the body corporate.

(2) Subsection (1) does not apply to a credit union in respect of an investment in the shares of a body corporate described in paragraphs 1 to 15 of subsection 67 (1),

- (a) if, after the investment is made, all the voting rights attached to the voting shares of the body corporate would be owned by credit unions; or
- (b) if the Corporation approves the credit union's investment before the investment is made.

(3) For the purposes of section 198 of the Act, it is a prescribed condition that a credit union not directly or indirectly invest in ownership interests in an unincorporated entity if, as a result of the investment, the aggregate of any ownership interests, however designated, into which the entity is divided that would be beneficially owned by the credit union and by entities it controls would exceed 30 per cent of all the ownership interests into which the unincorporated entity is divided.

## RESTRICTION ON SINGLE INVESTMENTS

### Restriction re single investments

**64.** For the purposes of section 198 of the Act, a credit union shall not directly or indirectly invest, by way of purchases from or loans to one person or more than one person that, to its knowledge, are connected persons, more than 25 per cent of the credit union's regulatory capital.

### Exception to restriction re single investments

**65.** For the purposes of subclause 199 (1) (a) (iii) of the Act, the following are prescribed persons and entities for class 1 and class 2 credit union:

1. Credit Union Central of Canada.
2. Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or La Caisse centrale Desjardins du Québec.
3. Subsidiaries of the credit union.

## CONNECTED PERSONS

### Connected persons

**66.** The following conditions are prescribed as conditions that, if satisfied, result in persons being connected persons for the purposes of the Act:

1. In relation to a person or entity, if another person or entity is one of the following:
  - i. a body corporate in which the person or entity holds or beneficially owns, directly or indirectly, at least 35 per cent of the voting securities,
  - ii. an affiliate of a body corporate described in paragraph 1,
  - iii. a person or entity that has a 50 per cent interest in a partnership in which the person or entity also has a 50 per cent interest,
  - iv. a partnership in which the person or entity is a partner,
  - v. a trust or estate in which the person or entity has a substantial beneficial interest,
  - vi. a trust or estate in respect of which the person or entity serves as a trustee or in a similar capacity,
  - vii. a person or entity on whose financial resources the person or entity depends to repay a loan to the credit union,
  - viii. a person or entity who provides security to the credit union for a loan to the person or entity.
2. In relation to an individual, if another individual is one of the following:
  - i. a spouse of the individual who is financially dependent on the individual,
  - ii. a relative of the individual or of the individual's spouse who lives in the same home as the individual and who is financially dependant on the individual or spouse.

## INVESTMENT IN SUBSIDIARIES

### Investment in subsidiaries

67. (1) For the purposes of subsection 200 (1) of the Act, the following are the prescribed subsidiaries:

1. A financial institution.
2. A factoring corporation.
3. A financial leasing corporation.
4. An information services corporation.
5. An investment counselling and portfolio management corporation.
6. A mutual fund corporation.
7. A mutual fund distribution corporation.
8. A real property brokerage corporation.
9. A real property corporation.
10. A service corporation.
11. A body corporate engaging in the activities of a securities dealer.
12. A corporation licensed as a mortgage brokerage under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.
13. A body corporate that engages in two or more of the businesses or activities carried on by corporations referred to in this subsection.
14. An entity that is limited to businesses and activities in which the credit union is permitted to engage.
15. A body corporate whose sole purpose is to hold all of the credit union's shares in one or more of the subsidiaries described in paragraphs 1 to 14.

(2) A factoring corporation is a body corporate that is restricted to acting as a factor in respect of accounts receivable, raising money for the purpose of acting as a factor and lending money while acting as a factor.

(3) A financial leasing corporation is a body corporate that is restricted to,

- (a) engaging in financial leasing of personal property;
- (b) entering into and accepting assignments of conditional sales agreements in respect of personal property;
- (c) administering financial lease agreements and conditional sales agreements on behalf of a person; and
- (d) raising money for the purpose of financing its activities and investing the money until it is used for those activities.

(4) An information services corporation is a body corporate that is primarily engaged in,

- (a) collecting, manipulating and transmitting information that is primarily financial or economic in nature or that relates to the business of an entity referred to in subsection (1);
- (b) providing advisory and other services in the design, development and implementation of information management systems; or
- (c) designing, developing and marketing computer software.

Its ancillary activities may include the design, development, manufacture or sale of computer equipment that is not generally available and that is integral to the provision of financial services or information services related to the business of financial institutions.

(5) An investment counselling and portfolio management corporation is a body corporate whose principal activities are either of the following:

1. Offering advice or advising about investments.
2. Investing or controlling money, property, deposits or securities that it does not own and that are not deposited with it in the ordinary course of business. This must involve the exercise of discretion and judgment.

(6) A mutual fund corporation is a body corporate restricted to investing its funds. It may also be a body corporate that issues securities entitling the holder to receive, on demand or within a specified period, an amount computed by reference to the value of a proportionate interest in all or part of its net assets (including a separate fund or a trust account).

(7) A mutual fund distribution corporation is a body corporate whose principal activities are acting as an agent selling and collecting payment for interests in a mutual fund. Purchasers must be told about the existence of any sales commission or service fee before buying an interest in the mutual fund. The sales proceeds, less sales commissions and service fees, must be paid to the fund.

(8) A real property brokerage corporation is a body corporate that is primarily engaged in,

- (a) acting as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real estate; and
- (b) providing consulting or appraisal services with respect to real estate.

(9) A real property corporation is a body corporate that is primarily engaged in holding, managing or otherwise dealing with,

- (a) real estate; or
- (b) shares of another body corporate or ownership interests in an unincorporated entity, limited partnership or trust that is primarily engaged in holding, managing or otherwise dealing with real estate.

(10) A securities dealer is a body corporate that trades in securities in the capacity of principal or agent. "Trade" has the same meaning as in the *Securities Act*.

(11) A service corporation is a body corporate that provides services exclusively to one or more of the following:

1. The credit union.
2. Subsidiaries of the credit union.
3. Financial institutions affiliated with the credit union.

#### **Restriction on investment in subsidiaries**

**68.** For the purpose of subsection 200 (7) of the Act, the prescribed percentage of the credit union's regulatory capital is 100 per cent.

## **PART IX** **INTEREST RATE RISK MANAGEMENT**

### **Interpretation**

**69.** A credit union's exposure to interest rate risk refers to the potential negative impact, expressed in dollars of changes in interest rates on a credit union's earnings and net asset values when the dates of its payments of principal and interest and its receipts of principal and interest are not matched.

### **Policies and procedures**

**70.** (1) Every credit union shall establish, for the purposes of managing its exposure to interest rate risk, policies and procedures that address the following matters:

1. The limits on the credit union's exposure to interest rate risk and on the impact of this exposure on its net interest income and surplus. The limits must be clear and prudent.
2. The techniques to be used to calculate the amount of the credit union's exposure to interest rate risk.
3. The internal controls to be implemented to ensure compliance with the policies and procedures.
4. The corrective action to be taken if the limits on the credit union's exposure to interest rate risk are exceeded.
5. The content and frequency of reports to be made to the board of directors by the management of the credit union about the management of the credit union's exposure to interest rate risk.

(2) The limits must take into account fluctuations in interest rates that might reasonably be expected to occur.

(3) For a class 1 credit union, the limits must limit changes in net income to changes that do not exceed 0.15 per cent of the credit union's total assets.

(4) The policies and procedures must require the management of the credit union to submit a report to the board of directors and the Corporation if the credit union's exposure to interest rate risk exceeds the limits established in the policies and procedures, and the report must be submitted within 21 days after the credit union takes steps to bring the amount of its exposure within the limits.

(5) A report required by subsection (4) must,

- (a) describe the circumstances that led to the credit union's exposure to interest rate risk exceeding the limits;
- (b) describe the effect that this exposure has had, and may have, on net income;
- (c) describe the steps taken to bring this exposure within the limits; and
- (d) include a schedule indicating when the credit union will comply with its policies and procedures.

(6) The policies must be approved by the board of directors of the credit union.

**Same**

71. (1) If a credit union's exposure to interest rate risk exceeds the limits established in its policies and procedures, the credit union shall immediately take steps to bring its exposure within those limits.

(2) If a credit union's exposure to interest rate risk exceeds the limits established in its policies and procedures for two consecutive quarters, the credit union shall promptly submit to the Corporation a plan approved by the board of directors that describes the steps the credit union intends to take to bring its exposure to interest rate risk within those limits.

**Interest rate risk report**

72. (1) A credit union shall prepare a report at the end of each quarter of its fiscal year on its management of the credit union's exposure to interest rate risk.

(2) The report must include all information about the management of interest rate risk that the credit union has filed with the Corporation.

(3) The report must be presented at the next board meeting immediately after it is prepared and the board shall review it.

**PART X**  
**RESTRICTED PARTY TRANSACTIONS**

**INTERPRETATION**

**Application**

73. This Part applies with respect to transactions entered into, renewed, extended or modified after March 1, 1995.

**Definition of "restricted party"**

74. (1) For the purposes of the Act,

"restricted party" means, in relation to a credit union, a person who is or has been in the preceding 12 months,

- (a) a director or officer of the credit union,
- (b) a spouse of a director or officer of the credit union,
- (c) a relative of a person described in clause (a) or (b), if the relative lives in the home of a person described in clause (a) and is financially dependent on a person described in clause (a) or (b),
- (d) the auditor of the credit union, if the auditor is an individual,
- (e) a corporation in which a director or officer of the credit union beneficially owns, directly or indirectly, more than 10 per cent of the voting shares,
- (f) a corporation controlled by a person described in clause (a), (b), (c) or (d), or
- (g) an affiliate of the credit union, other than a subsidiary.

(2) For the purposes of subsection (1),

"officer" includes a person who has not yet assumed the office.

**Definition of "transaction"**

75. (1) For the purposes of the Act,

"transaction", as between a credit union and a restricted party, includes,

- (a) a guarantee given by the credit union on behalf of the restricted party,
- (b) an investment by the credit union in securities issued by the restricted party,
- (c) a loan from the credit union to the restricted party,
- (d) an assignment taken or acquisition made by the credit union of a loan made by a third party to the restricted party, and

- (e) a security interest taken by the credit union in securities issued by the restricted party.
- (2) The performance of a condition of a transaction forms a part of the transaction and does not constitute a separate transaction.
- (3) The payment of dividends to a restricted party does not constitute a transaction between a credit union and the restricted party.

## PERMITTED TRANSACTIONS

### Permitted transactions

76. A credit union may enter into a transaction with a restricted party if the value of the transaction is nominal or if the transaction is not material when measured by criteria established by the board.

### Same

77. (1) A credit union may issue to a restricted party shares that are fully paid for with money or that are issued,

- (a) upon the conversion of other issued and outstanding securities of the credit union;
- (b) as a share dividend;
- (c) as a patronage return;
- (d) in accordance with an amalgamation agreement;
- (e) in exchange for shares of another body corporate; or
- (f) in exchange for other property.

(2) A credit union may issue shares under clause (1) (e) or (f) only with the prior written approval of the Superintendent.

### Same

78. (1) A credit union or its subsidiary may enter into any of the following transactions with a restricted party if the transaction is authorized in advance by at least two-thirds of the members of the board of the credit union:

1. A written contract for the purchase of goods or services, other than management services, required by the credit union or the subsidiary to carry on business. The term of the contract and of each potential

renewal must not exceed five years. The contract must state the consideration to be paid.

2. A written contract for the provision of management services to or by the credit union or subsidiary. It must be reasonable that the credit union or subsidiary supply the services. The amount to be paid must not exceed fair market value.
3. A written lease of personal property for the credit union or subsidiary to use in carrying on business. The term of the lease and of each potential renewal must not exceed five years. The amount to be paid must not exceed fair market value.
4. A written lease of real property for the credit union or subsidiary to use in carrying on business. The term of the lease and of each potential renewal must not exceed 10 years. The amount to be paid must not exceed fair market value.
5. A contract of employment with an officer of the credit union or a subsidiary.
6. A written contract for employment benefit plans and pension plans and for other reasonable commitments incidental to the credit union or subsidiary employing individuals.
7. A loan. The credit union or subsidiary must be otherwise authorized under the Act to make the loan. The terms of the loan must be no more favourable than those offered in the ordinary course of business by the credit union to its members.

(2) A credit union or a subsidiary may enter into any of the following transactions with a restricted party:

1. A contract of employment with an individual who is not a director or officer of the credit union or subsidiary.
2. A deposit made by the credit union for clearing purposes with a financial institution that is a direct clearer or a group clearer member under the by-laws of the Canadian Payments Association.
3. A contract to borrow money from the restricted party.
4. The receipt of deposits from the restricted party.
5. The issuance of debt obligations to the restricted party.

(3) The by-laws of the credit union may require the transactions described in subsection (2) to be authorized by a process specified in the by-laws.

(4) A credit union may make residential mortgage loans or personal loans to directors or officers of the credit union on terms more favourable than those offered in the ordinary course of business by the credit union to its members if two-thirds of the members of the board have approved the policies and procedures governing the making of such loans.

## **RESTRICTED PARTY TRANSACTION PROCEDURES**

### **Restricted party transaction procedures**

79. (1) A credit union shall establish procedures to ensure that it complies with the restrictions governing restricted party transactions.

(2) The procedures form part of the investment and lending policies and procedures of the credit union for the purposes of section 189 of the Act.

(3) The procedures must include review and approval procedures to be followed by directors, officers and employees.

(4) The procedures must require that a restricted party disclose to the credit union, in writing, the party's interest in a transaction or a proposed transaction with the credit union or its subsidiary.

(5) The disclosure to be made by a director or officer must be made in the manner set out in sections 146 and 147 of the Act, with necessary modifications.

## **PART XI**

### **MEETINGS**

#### **FIRST MEETING**

##### **First Meeting**

80. (1) The first meeting of a credit union must be convened by a majority of the incorporators.

(2) Written notice of the meeting must be mailed or sent by electronic means to each incorporator at least seven days before the date of the meeting.

(3) The notice must state the date, time, place and purpose of the meeting.

##### **Quorum**

81. At the first meeting of a credit union, a majority of the incorporators constitutes a quorum.

### **Business to be dealt with**

82. The following business must be transacted at the first meeting of a credit union:

1. The directors must be elected.
2. The mandatory by-laws required under subsection 105 (2) of the Act must be enacted.
3. The members of the audit committee must be elected, if the articles require an election.
4. The members of the credit committee, if any, must be elected.
5. The auditor must be appointed.

### **FINANCIAL STATEMENTS**

#### **Financial statements**

83. (1) For the purposes of subsection 213 (1) of the Act, the prescribed matters to be shown on the financial statements of a credit union are:

1. The amount and composition of Tier 1 and Tier 2 capital and the percentage of regulatory capital held for determining compliance to the capital adequacy requirements of section 14.
2. The amount of each type of asset held for liquidity purposes as determined under section 20.
3. The amount of outstanding loans in each of the loan classes described in section 48.
4. The amount of impaired loans, the allowance for impairment and the charge for impairment.
5. The value of investments in marketable securities that are held to maturity, available for sale and designated as held for trading.

(2) The following time periods are prescribed, for the purposes of subsection 213 (1) of the Act, as the time periods to which the prescribed matters must relate:

1. The most recently completed financial year.

2. The financial year immediately before the most recently completed financial year.

## PART XII RETURNS, EXAMINATIONS AND RECORDS

### **Document retention**

84. (1) A credit union shall keep and maintain the following in accordance with section 231 of the Act:

1. A copy of its articles of incorporation and any amendments to them or, if applicable, its other incorporating document and any amendments to it.
2. A copy of its articles of continuance, if applicable.
3. The by-laws and resolutions, including special resolutions, of the credit union.
4. The register of members, shareholders and security holders required by section 230 of the Act to be kept by the credit union.
5. A register of the directors, members of the audit committee and any other committees established by the board and all officers of the credit union, setting out their names, residential addresses, including the street and number, if any, their occupations and the several dates on which they have become or ceased to be a member of the board or committee.
6. A register of all securities held by the credit union.
7. Books of account and accounting records of the credit union.
8. The minutes of all proceedings at meetings of members, shareholders, directors and committees.
9. The audited financial statements of the credit union placed before the members at the most recent annual meeting.

(2) Despite paragraph 8 of subsection (1), a credit union may dispose of minutes of committee proceedings that were held more than six years before the disposition.

**Maximum fee for by-laws**

85. For the purpose of subsection 233 (2) of the Act, the prescribed amount is \$25.

**PART XIII  
LEAGUES**

**APPLICATION**

**Application**

86. This Regulation applies with respect to a league as if it were a credit union, except to the extent modified by this Part.

**CAPITAL STRUCTURE**

**Capital structure**

87. For the purposes of subsection 74.1 (1) of the Act, the following are prescribed persons to whom a security of a league issued under circumstances described in clause 75 (1) (a) of the Act may be transferred:

1. A member of the league issuing the securities.
2. A member of a credit union that is a member of the league issuing the securities.
3. The Corporation.

**ADEQUATE CAPITAL**

**Adequate capital**

88. (1) A league has adequate capital if its regulatory capital at least equals 5 per cent of its total assets.

(2) Section 14 does not apply with respect to a league.

**BUSINESS POWERS**

**Business powers**

89. For the purposes of subsection 241 (3.1) of the Act, a league may engage in or carry on the following business activities and provide the following services:

1. Accepting deposits and making loans.
2. Guaranteeing loans.

3. Providing administrative, advisory, educational, managerial, promotional and technical services to credit unions.
4. Arranging for one or more pension plans for the directors, officers, employees and members of credit unions, their subsidiaries and subsidiaries of the league.
5. Arranging for group bonding for directors, officers and employees of a credit union, its subsidiaries and subsidiaries of the league.
6. Providing credit counselling to members of credit unions who are repaying loans made by the credit unions.

#### **Permitted activities**

**90.** For the purposes of section 173 of the Act, a league may provide investment counselling and portfolio management services to its members, depositors, subsidiaries and affiliates.

#### **Group insurance**

**91.** (1) A league may administer a group insurance policy for its employees, its members, the employees of its members or subsidiaries and credit unions that are not members and their employees.

(2) Group accident and sickness insurance and group life insurance administered by a league must be restricted to the league's employees, its members, the employees of its members or subsidiaries and credit unions that are not members and their employees.

#### **Trustee**

**92.** For the purposes of section 177, a league is authorized to act as trustee with respect to an escrow agreement relating to share offerings by a credit union.

### **INVESTMENT AND LENDING**

#### **Investment and lending**

**93.** Section 58 does not apply with respect to a loan made by a league to a credit union or to a subsidiary of the league.

#### **Exception to restriction re single investments**

**94.** (1) For the purposes of subsection 199 (1) of the Act, the prescribed amount is 10 per cent of a league's deposits and regulatory capital.

(2) Despite subsection (1), La Fédération des caisses populaires de l'Ontario may invest 25 per cent of its deposits and regulatory capital in La Fédération des caisses Desjardins du Québec.

**Same**

**95.** The following conditions are prescribed as conditions that, if satisfied in relation to a member or a customer of a league, result in persons being connected for the purposes of section 199 of the Act:

1. Another person or entity is one of the following:
  - i. a body corporate in which the member or customer holds or beneficially owns, directly or indirectly, at least 20 per cent of the voting securities;
  - ii. an affiliate of a body corporate described in subparagraph i;
  - iii. a person or entity that has a 50 per cent interest in a partnership in which the member or customer also has a 50 per cent interest;
  - iv. a partnership in which the member or customer is a partner;
  - v. a trust or estate in which the member or customer has a substantial beneficial interest;
  - vi. a trust or estate in respect of which the member or customer serves as trustee or in a similar capacity;
  - vii. a person or entity on whose financial resources the member or customer depends to repay a loan to a league;
  - viii. a person who provides security to a league for a loan to the member or customer.
2. If another individual is one of the following:
  - i. a spouse who is financially dependent on the member or customer;
  - ii. a relative of the member or customer or of the member's or customer's spouse who lives in the same home as the member or customer, who is financially dependent on the member, customer or spouse.

## **SUBSIDIARIES**

### **Subsidiaries**

**96.** For the purposes of subsection 241 (5) of the Act, leagues may carry on business through the following types of subsidiaries:

1. A subsidiary in which a credit union may invest under the Act.
2. A corporation established to carry out a league's responsibilities as a stabilization authority.
3. A corporation established to administer development funds for the creation of new credit unions.
4. A corporation established to administer development funds for investments in, and loans to, small businesses.
5. A corporation that issues payment cards, credit cards or charge cards and operates a payment or charge card plan.

### **Restriction on investment in subsidiaries**

**97.** For the purpose of subsection 200 (7) of the Act, the prescribed amount is 20 per cent of the league's regulatory capital and deposits.

## **EXEMPTIONS FROM THE ACT**

### **Exemptions from the Act**

**98.** Leagues are exempted under subsection 243 (2) of the Act from the following provisions of the Act:

1. Section 31 (admissions outside bonds of association).
2. Section 46 (withdrawal of members).
3. Section 47 (expulsion of members).
4. Section 201.1 (investment in another credit union).
5. Section 217 (requisitions for meetings).

**PART XIV**  
**DEPOSIT INSURANCE CORPORATION OF ONTARIO**

**DEFINITION**

**Definition**

**99.** In this Part,

"deposit", for the purpose of deposit insurance, has the meaning set out in the by-laws of the Corporation.

**INVESTMENT OF FUNDS**

**Investment of funds**

**100.** (1) For the purposes of section 269 of the Act, the Corporation may invest any funds not required in carrying out its objectives in securities in which a class 2 credit union may invest its funds.

(2) The board of directors of the Corporation shall establish prudent investment policies and procedures for the purpose of carrying out its object of managing the Deposit Insurance Reserve Fund.

(3) The board of directors of the Corporation shall review its investment policies and procedures at least once a year and shall make such revisions as may be necessary to ensure that the investment policies and procedures satisfy the requirements of subsection (2).

**Same**

**101.** For the purposes of section 269 of the Act, the Corporation's investments are subject to the same restrictions that apply with respect to investments made by class 2 credit unions.

**DEPOSIT INSURANCE LIMIT**

**Deposit insurance limit**

**102.** For the purposes of paragraph 2 of subsection 270 (2) of the Act, the Corporation shall not insure the amount of any one deposit that exceeds \$100,000.

**AMALGAMATIONS**

**Amalgamations**

**103.** For the purposes of subsection 271 (3) of the Act, the prescribed amount is \$100,000.

## ANNUAL PREMIUM

### Annual premium

104. (1) For the purposes of paragraph 1 of subsection 276.1 (1) of the Act, the Corporation shall determine the credit union's annual premium in accordance with this section.

(2) The Corporation shall determine the risk rating of each credit union and league in accordance with this section and with the rules set out in *DICO Risk Classification System*, dated November 10, 2000, as amended from time to time, and published by the Corporation in *The Ontario Gazette* on November 25, 2000.

(3) The risk rating of a credit union or league at a particular time is determined with reference to the following components:

1. Capital: the level of regulatory capital of the credit union or league.
2. Asset quality: the loan loss experience of the credit union or league.
3. Management: the effectiveness of the risk management practices of the credit union or league, as determined with reference to the Act and By-law No. 5 of the Corporation ("Standards of Sound Business and Financial Practices").
4. Earnings: the average return on assets of the credit union or league.
5. Asset and liability management: the level of interest rate risk of the credit union or league.

(4) The annual premium payable by a credit union or league is calculated at the rate set out in Column 3 of the Table to this section opposite the category of risk rating set out in Column 2 within which the credit union's or league's risk rating falls.

**TABLE**

Column 1	Column 2	Column 3
Premium Class	Risk Rating	Premium Rate
1	85 points or more	\$0.90 per \$1,000 of the funds described in subsection (5) for a credit union and in subsection (6) for a league
2	At least 70 points and less than 85 points	\$1.00 per \$1,000 of those funds
3	At least 55 points and less than 70 points	\$1.15 per \$1,000 of those funds
4	At least 40 points and less than 55 points	\$1.40 per \$1,000 of those funds
5	Less than 40 points	\$2.10 per \$1,000 of those funds

(5) The calculation of the annual premium for a credit union is based only on Canadian funds on deposit with the credit union, and no premium is payable with respect to that portion of a deposit that is uninsured by virtue of section 270 of the Act.

(6) The calculation of the annual premium for a league is based on Canadian funds on deposit with the league for a person that is not a credit union, and no premium is payable with respect to that portion of a deposit that is uninsured by virtue of section 270 of the Act.

(7) The Corporation may estimate the amount of funds on deposit with the credit union or league using the quarterly financial return of the credit union or league and may adjust the premium upon receiving the audited financial statements.

(8) The annual premium payable by a credit union or league that carries on business for less than one year shall be reduced by an amount proportionate to the period during which it did not carry on business.

(9) Despite subsections (4) and (8), the minimum annual premium payable by a credit union or league is \$250.

(10) The Corporation may use approximate figures in determining or calculating an amount under this section.

**Payment of annual premium**

**105.** A credit union or league shall pay its annual premium within 30 days after the date of the invoice for the premium.

**Audited statement of deposits**

**106.** A credit union or league shall file an audited statement of its deposits with the Corporation at such time as the Corporation directs and respecting such period as the Corporation directs.

## PART XV CONTINUING AS OR CEASING TO BE AN ONTARIO CREDIT UNION

### CONTINUING AS AN ONTARIO CREDIT UNION

#### Articles of continuance

**107.** The following are prescribed, for the purposes of subsection 316 (3) of the Act, as documents that must accompany the articles of continuance:

1. A copy of the incorporating document of the body corporate, together with all amendments to the document, certified by the officer of the incorporating jurisdiction who is authorized to so certify.
2. A letter of satisfaction, certificate of continuance or other document issued by the proper officer of the incorporating jurisdiction that indicates that the body corporate is authorized under the laws of the jurisdiction in which it was incorporated or continued to apply for articles of continuance.

#### Conditions for issue of certificate of continuance

**108.** The following are prescribed as conditions for the purposes of subsection 316 (5) of the Act:

1. The Superintendent shall not issue a certificate of continuance unless the body corporate satisfies the Superintendent that the matters set out in paragraphs 1 to 5 of subsection 16 (2) of the Act are satisfied.
2. The Superintendent shall not issue a certificate of continuance unless the body corporate satisfies the Superintendent that the body corporate would meet all the requirements of the Act if it were continued as a credit union.

#### Limits on transition period

**109.** (1) The prescribed maximum period for the purposes of paragraph 1 of subsection 316 (12) of the Act is two years beginning on the date the articles of continuance became effective.

(2) The prescribed maximum extension period for the purposes of paragraph 2 of subsection 316 (12) of the Act is seven years beginning on the date the articles of continuance became effective.

### TRANSFER TO ANOTHER JURISDICTION

#### Conditions for issue of certificate of continuance

**110.** The following are prescribed as conditions for the purposes of subsection 316.1 (5) of the Act:

1. The Superintendent shall not issue a certificate of approval of continuance unless the credit union satisfies the Superintendent as to the following:
  - i. the shareholders or members who voted against the special resolution to apply for the certificate of continuance will be entitled to be paid the value of their membership, patronage and other shares, calculated in accordance with subsection 62 (2) of the Act,
  - ii. the credit union will proceed with the continuation before the certificate of approval of continuation expires, unless the directors, with the authorization of the shareholders or members, abandon the application.
2. The Superintendent shall not issue a certificate of approval of continuance unless the credit union satisfies the Superintendent that after the credit union is continued under the laws of the other jurisdiction, the laws of that jurisdiction provide in effect that,
  - i. the continued body corporate will possesses all the property, rights, privileges and franchises and be subject to all the liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the credit union,
  - ii. a conviction against, or ruling, order or judgment in favour of or against, the credit union may be enforced by or against the continued body corporate, and
  - iii. the continued body corporate will continue as a party in any civil action commenced by or against the credit union.
3. The Superintendent shall include, in each certificate of approval of continuance, a condition that the certificate expires if the credit union has not been continued within six months after the certificate was issued.

### **CONTINUATION UNDER ANOTHER ONTARIO ACT**

#### **Conditions for issue of certificate of continuance**

**111.** The following are prescribed as conditions for the purposes of subsection 316.2 (5) of the Act:

1. The Superintendent shall not issue a certificate of approval of continuance unless the credit union satisfies the Superintendent that

the shareholders or members who voted against the special resolution to apply for the certificate of continuance will be entitled to be paid the value of their membership, patronage and other shares, calculated in accordance with subsection 62 (2) of the Act.

2. The Superintendent shall not issue a certificate of approval of continuance unless the credit union satisfies the Superintendent that, after the credit union is continued,
  - i. the continued body corporate will possesses all the property, rights, privileges and franchises and be subject to all the liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the credit union,
  - ii. a conviction against, or ruling, order or judgment in favour of or against, the credit union may be enforced by or against the continued body corporate, and
  - iii. the continued body corporate will continue as a party in any civil action commenced by or against the credit union.
3. The Superintendent shall include, in each certificate of approval of continuance, a condition that the certificate expires if the credit union has not been continued within six months after the certificate was issued.

## PART XVI CONSUMER PROTECTION

### DISCLOSURE RE INTEREST RATES, ETC.

#### **Disclosure re interest rates, etc.**

**112.** (1) A credit union shall disclose to a prospective depositor the applicable rate of interest for the person's account and the manner of calculating the interest payable.

(2) Whenever there is a change in the rate of interest or in the manner of calculating the amount of interest that applies to a deposit account, the credit union shall disclose the change by means of,

- (a) delivering a written statement to a person in whose name the account is maintained;

- (b) displaying and making available copies of a written statement at each branch of the credit union where the accounts are held; or
- (c) displaying a general notice at each branch of the credit union where the accounts are kept.

**Same**

**113.** If a credit union renews a term deposit account, the credit union shall disclose to the depositor the rate of interest for the account and the manner of calculating the interest payable.

**Disclosure in advertising**

**114.** (1) In an advertisement about an interest-bearing deposit or a debt obligation, a credit union shall disclose how the interest is to be calculated and any circumstances that will affect the rate of interest.

(2) An advertisement about an interest-bearing deposit must state how the balance of a deposit account will affect the rate of interest.

**CONSUMER COMPLAINTS BY MEMBERS AND DEPOSITORS**

**Consumer complaints by members and depositors**

**115.** (1) A credit union shall designate an employee of the credit union as the credit union's complaints officer whose duty shall be to receive and attempt to resolve complaints made by members and depositors.

(2) A credit union shall advise its members and depositors, in a manner that it considers appropriate, of the name and contact information of the complaints officer.

(3) If a person who makes a written complaint to the credit union about the business activities of the credit union, the credit union shall give the person a written response to the complaint setting out the credit union's proposed resolution of the complaint.

(4) A credit union shall also inform the person who made the complaint that, if the person is not satisfied with the proposed solution and if the person believes that the complaint relates to a contravention of the Act or a regulation, the person may refer the complaint to the Superintendent.

(5) A credit union shall keep a copy of every complaint it receives, every response it issues and any other document that relates to a complaint for six years from the date of the complaint and shall make them available if requested to do so by the Superintendent.

(6) The complaints officer shall report at least once annually to the Board about the complaints received and how they were disposed of in a form that is satisfactory to the Board.

**Same**

**116.** (1) If, as a result of receiving a complaint, the Superintendent addresses an inquiry to a credit union or an officer about the conduct of the credit union's business, the credit union or officer shall promptly reply in writing to the inquiry.

(2) If requested to do so by the Superintendent, the credit union shall give a copy of the Superintendent's inquiry and the reply to each director of the credit union and the inquiry and reply shall form part of the minutes of the next board meeting.

**PART XVII**  
**ADMINISTRATIVE PENALTIES**

**Administrative penalties**

**117.** (1) For the purposes of subsections 331.2 (1) and 331.3 (1) of the Act, the amount of the administrative penalty for a contravention is, for each day on which the contravention occurs or continues, \$100 for a class 1 credit union and \$250 for a class 2 credit union.

(2) If the contravention is a failure to file a document or to provide information in accordance with subsection 331.2 (2) or 331.3 (2) of the Act, the contravention occurs on the day following the day on which the document was required to be filed or the information was required to be provided and continues until it is filed or provided, as the case may be, or until the credit union is notified by the Superintendent or the Corporation that the document or the information is no longer required.

(3) Despite subsection (2), where a person or entity has filed a document or provided information in the appropriate form but the document or information is incomplete or inaccurate, the contravention is deemed to have occurred on the day on which the person or entity is given written notice that the document or information is incomplete or inaccurate.

(4) If the contravention is a failure to hold a meeting in accordance with subsection 331.2 (2) or 331.3 (2) of the Act, the contravention is deemed to occur on the third day following the day on which the meeting was required to be held and continues until the meeting is held or until the credit union is notified by the Superintendent or the Corporation that the meeting is no longer required.

(5) In determining whether to impose an administrative penalty on a person or entity under subsection 331.2 (2) or 331.3 (2) of the Act for a purpose set out in section 331.1 of the Act, the Superintendent or the Corporation, whichever is authorized to impose the penalty, shall consider only the following:

1. Whether the contravention was caused by an event outside the person or entity's control.
2. Whether the person or entity could have taken steps to prevent the contravention.
3. With respect to incomplete or inaccurate documents or information, whether due diligence was exercised in filing the documents or preparing the information.
4. Whether the person or entity derived or reasonably might have been expected to derive, directly or indirectly, any economic benefit from the contravention or failure.

(6) A person or entity on whom an administrative penalty has been imposed must pay the penalty,

- (a) if the order is not appealed, within 30 days from the date of the order of the Superintendent or the Corporation imposing the penalty or such longer time as may be specified in the order; or
- (b) if the order is appealed under subsection 331.2 (5) or 331.3 (5) of the Act, within 30 days from the date the Tribunal confirms or varies the order or such longer time as may be specified in the order.

(7) Administrative penalties shall be paid into the Consolidated Revenue Fund.

## VI. CONSULTATION DRAFT OF COST OF BORROWING AND DISCLOSURE TO BORROWERS REGULATION

### PROPOSED ONTARIO REGULATION

to be made under the

### CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994

### COST OF BORROWING AND DISCLOSURE TO BORROWERS

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## APPLICATION AND INTERPRETATION

### Application

1. (1) This Regulation applies to every credit agreement entered into by a credit union, other than a credit agreement entered into for the business purposes of a borrower or a credit agreement entered into with a borrower who is not a natural person.

(2) This Regulation applies to the renewal or on-going administration of a credit agreement entered into before this Regulation comes into force.

### Definitions

2. In this Regulation

"APR" means the cost of borrowing for a loan under a credit agreement expressed as an annual rate on the principal referred to in subsection 3 (1);

"borrower" includes a person to whom a loan is proposed to be made and a holder, or an applicant to become a holder, of a credit card;

"credit agreement" includes an agreement for a line of credit, a credit card or any kind of loan;

"disbursement charge" means a charge, other than one referred to in subsection 5 (1), to recover an expense incurred by a credit union to arrange, document, insure or secure a credit agreement, and includes a charge referred to in clauses 5 (2) (c) and (f) to (h);

"high-ratio mortgage" means a mortgage under which the amount advanced, together with the amount outstanding under another mortgage that ranks equally with, or prior to, the mortgage loan exceeds 80 per cent of the market value of the property securing the loan;

"principal" means the amount borrowed under a credit agreement but does not include any cost of borrowing;

"public index" means an interest rate, or a variable base rate for an interest rate, that is published at least weekly in a newspaper or magazine of general circulation, or in some media of general circulation or distribution, in areas where borrowers whose credit agreements are governed by that interest rate reside.

## COST OF BORROWING

### Calculation of the APR

3. (1) The cost of borrowing for a loan under a credit agreement, other than a loan obtained through the use of a credit card or line of credit, is the annual rate on the principal as calculated using the formula,

in which,

"APR" is the annual percentage rate cost of borrowing,

"C" is the cost of borrowing within the meaning of section 5 over the term of the loan,

"P" is the average of the principal of the loan outstanding at the end of each period for the calculation of interest under the credit agreement, before subtracting any payment that is due at that time, and

"T" is the term of the loan in years, expressed to at least two decimal points of significance.

(2) For the purposes of subsection (1),

- (a) the APR may be rounded off to the nearest eighth of a per cent;
- (b) each instalment payment made on a loan must be applied first to the accumulated cost of borrowing and then to the outstanding principal;
- (c) a period of ,
  - (i) one month is 1/12 of a year,
  - (ii) one week is 1/52 of a year, and
  - (iii) one day is 1/365 of a year;
- (d) if the annual interest rate underlying the calculation is variable over the period of the loan, it must be set as the annual interest rate that applies on the day that the calculation is made;
- (e) if there are no instalment payments under a credit agreement, then the APR must be calculated on the basis that the outstanding principal is to be repaid in one lump sum at the end of the term of the loan; and

- (f) a credit agreement for an amount that comprises, in whole or in part, an outstanding balance from a prior credit agreement is a new credit agreement for the purpose of the calculation.

(3) The cost of borrowing for a loan obtained under a credit card agreement or line of credit is,

- (a) if the loan has a fixed annual interest rate, that annual interest rate; or
- (b) if the loan has a variable interest rate, the annual interest rate that applies on the date of the disclosure.

**Annual interest rate as APR**

- 4. (1) The APR for a credit agreement is the annual interest rate if there is no cost of borrowing other than interest.
- (2) If an interest rate is disclosed in accordance with section 6 of the *Interest Act* (Canada), the APR must be calculated in a manner that is consistent with that section.

**Included and excluded charges**

- 5. (1) Subject to subsection (2), the cost of borrowing for a loan under a credit agreement, other than an agreement for a credit card or line of credit, consists of all the costs of borrowing under the loan over its term, in particular the interest or discount that applies to the loan and includes the following charges:
  - 1. Administrative charges, including charges for services, transactions or any other activity in relation to the loan.
  - 2. Charges for the services, or disbursements, of a lawyer or notary that a credit union required the borrower to retain.
  - 3. Insurance charges other than those excluded under clauses (2) (a), (f) and (h).
  - 4. Charges for a broker, if the broker's charges are included in the amount borrowed and are paid directly by the credit union to the broker.
  - 5. Charges for appraisal, inspection or surveying services, other than those mentioned in paragraph (2) (g), related to property that is security for a loan, if those services are required by the credit union.
- (2) The cost of borrowing for a loan does not include,

- (a) charges for insurance on the loan,
  - (i) if the insurance is optional, or
  - (ii) if the borrower is its beneficiary and the amount insured reflects the value of an asset that is security for the loan;
- (b) charges for an overdraft;
- (c) charges paid to register documents or obtain information from a public registry about security interests related to property given as security;
- (d) penalty charges for the prepayment of a loan;
- (e) charges for the services, or disbursements, of a lawyer or notary, other than those mentioned in paragraph 2 of subsection (1);
- (f) charges for insurance against defects in title to real property,
  - (i) if the borrower selects the insurer,
  - (ii) if the insurance is paid for directly by the borrower, and
  - (iii) if the borrower is the beneficiary of the insurance;
- (g) charges for appraisal, inspection or surveying services provided directly to the borrower in relation to property that is security for a loan, if the borrower receives a report from the person providing the service and is entitled to give the report to third parties;
- (h) charges for insurance against default on a high-ratio mortgage;
- (i) charges to maintain a tax account that are required for a high-ratio mortgage or that are optional;
- (j) any charge to discharge a security interest; or
- (k) default charges.

## **DISCLOSURE TO BORROWERS**

### **Manner of making disclosures**

6. (1) A credit union that grants credit must give the borrower a written disclosure statement that provides the information required by this Regulation.

(2) A disclosure statement may be a separate document or may be part of a credit agreement or an application for a credit agreement.

(3) Information disclosed in a disclosure statement may be based on an assumption or an estimate if the assumption or estimate is reasonable and if the information,

- (a) cannot be known by the credit union when it makes the statement; and
- (b) is identified to the borrower as an assumption or estimate.

(4) A disclosure statement, or a consent in relation to a disclosure statement, must be written in plain language that is clear and concise and it must be presented in a manner that is logical and likely to bring to the borrower's attention the information that is required to be disclosed.

(5) If the borrower consents in writing, the disclosure statement may be provided by electronic means in an electronic form that the borrower can retrieve and retain.

### **Timing of initial disclosure**

7. (1) A credit union that proposes to enter into a credit agreement with a borrower must give the initial disclosure statement required by this Regulation to the borrower on or before the day that is the earlier of the day on which the borrower makes the first payment, other than a disbursement charge, in relation to the credit agreement and,

- (a) two clear business days before the borrower and the credit union enter into the credit agreement, in the case of a credit agreement for a mortgage; or
- (b) the day on which the borrower and the credit union enter into the credit agreement, in any other case.

(2) Clause (1) (a) does not apply if the borrower consents in writing to being given the initial disclosure for the credit agreement on the day on which the borrower and the credit union enter into the credit agreement.

**Disclosure - fixed interest loans for a fixed amount**

8. (1) A credit union that enters into a credit agreement for a loan for a fixed interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must give the borrower an initial disclosure statement that includes the following information:

1. The principal amount of the loan.
2. The amount of each advance of the principal and when each advance is to be made.
3. The total amount of all payments.
4. The cost of borrowing over the term of the loan, expressed in dollars and cents.
5. The term of the loan, and the period of amortization if it is different from the term.
6. The annual interest rate and the circumstances, if any, under which interest is compounded.
7. The APR, if it differs from the annual interest rate.
8. The date on and after which interest is charged and information concerning any period during which interest does not accrue.
9. The amount of each payment and when it is due.
10. The fact that each payment made on a loan must be applied first to pay the accumulated cost of borrowing and then to pay the outstanding principal.
11. Information about any optional service in relation to the credit agreement that the borrower accepts, the charges for each optional service and the conditions under which the borrower may cancel the service, if that information is not disclosed in a separate statement before the optional service is provided.
12. The information required by section 197.4 of the Act, including default charges that may be imposed under section 18 of this Regulation.
13. The property, if any, in which the credit union takes a security interest under the credit agreement.

14. Any charge paid for a broker, if the broker's charges are included in the amount borrowed and are paid directly by the credit union to the broker.
15. The fact that there is a charge to discharge a security interest and the amount of the charge on the day that the statement was provided.
16. The nature and amount of any charge other than an interest charge.

(2) If the outstanding balance of the loan is increased because the borrower has missed a scheduled instalment payment or because a default charge is levied on the borrower for missing a scheduled instalment payment, such that the amount of each of the subsequently scheduled instalment payments does not cover the interest accrued during the period for which a payment is scheduled, the credit union must give the borrower an additional disclosure statement within 30 days after the payment is missed or the default charge is levied and the disclosure statement must describe what occurred and the consequences.

**Disclosure - variable interest loans for a fixed amount**

9. (1) A credit union that enters into a credit agreement for a loan with a variable interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must give the borrower an initial disclosure statement that includes the following information:

1. The information required by section 8.
2. The annual rate of interest that applies on the date of the disclosure statement.
3. The method for determining the annual interest rate that applies after the date of the disclosure statement and when that determination is made.
4. The amount of each payment based on the annual interest rate that applies on the date of the disclosure statement and the dates when those payments are due.
5. The total amount of all payments and of the cost of borrowing based on the annual interest rate that applies on the date of the disclosure statement.
6. If the loan is to be paid by instalment payments and the amount to be paid is not adjusted automatically to reflect changes in the annual interest rate that apply to each instalment payment,

- i. the annual interest rate above which the amount of a scheduled instalment payment on the initial principal does not cover the interest due on the instalment payment, and
- ii. the fact that negative amortization is possible.

7. If the loan does not have regularly-scheduled payments,
  - i. the conditions that must occur for the entire outstanding balance, or part of it, to become due, or
  - ii. the provisions of the credit agreement that set out those conditions.

(2) If the variable interest rate for the loan is determined by adding or subtracting a fixed percentage rate of interest to or from a public index that is a variable rate, the credit union must give the borrower an additional disclosure statement at least once every 12 months that contains the following information:

1. The annual interest rate at the beginning and end of the period covered by the disclosure statement.
2. The outstanding balance at the beginning and end of the period covered by the disclosure statement.
3. The amount of each instalment payment due under a payment schedule and the time when each payment is due, based on the annual interest rate that applies at the end of the period covered by the disclosure statement.

(3) If the variable interest rate for the loan is determined by a method other than that referred to in subsection (2), the credit union must give the borrower an additional disclosure statement no more than 30 days after increasing the annual interest rate by more than 1 per cent above the most recently disclosed rate and the disclosure statement must contain the following information:

1. The new annual interest rate and the date on which it takes effect.
2. The amount of each instalment payment and the time when each payment is due, for payments that are affected by the new annual interest rate.

#### Disclosure - lines of credit

**10.** (1) A credit union that enters into a credit agreement for a line of credit must give the borrower an initial disclosure statement that includes the following information:

1. The initial credit limit, if it is known at the time the disclosure is made.
2. The annual interest rate, or the method for determining it if it is variable.
3. The nature and amounts of any non-interest charges.
4. The minimum payment during each payment period or the method for determining it.
5. Each period for which a statement of account is to be provided.
6. The date on and after which interest accrues and information concerning any grace period that applies.
7. The particulars of the charges or penalties referred to in paragraph 5 of section 197.4 of the Act, including default charges that may be imposed under section 18 of this Regulation.
8. The property, if any, in which the credit union takes a security interest under the credit agreement.
9. Information about any optional service in relation to the credit agreement that the borrower accepts, the charges for each optional service and the conditions under which the borrower may cancel the service, if that information is not disclosed in a separate statement before the optional service is provided.
10. A local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information about the account during the credit union's regular business hours.
11. Any charge paid for a broker, if the broker's charges are included in the amount borrowed and are paid directly by the credit union to the broker.

(2) If the initial credit limit is not known when the initial disclosure statement is made, the credit union must disclose it.

- (a) in the first statement of account provided to the borrower; or
- (b) in a separate statement that the borrower receives on or before the date on which the borrower receives that first statement of account.

(3) Subject to subsection (4), the credit union must give the borrower an additional disclosure statement at least once a month that contains the following information:

1. The period covered by the disclosure statement and the opening and closing balances in the period.
2. An itemized statement of account that discloses each amount credited or charged, including interest, and the dates when those amounts were posted to the account.
3. The sum for payments and the sum for credit advances and interest and other charges.
4. The annual interest rate that applied on each day in the period and the total of interest charged at those rates in the period.
5. The credit limit and the amount of credit available at the end of the period.
6. The minimum payment and its due date.
7. The borrower's rights and obligations regarding any billing error that may appear in the statement of account.
8. A local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information about the account during the credit union's regular business hours.

(4) The additional disclosure statements described in subsection (3) are not required for a period during which there are no advances or payments and,

- (a) there is no outstanding balance at the end of the period; or
- (b) the borrower has notice that the credit agreement has been suspended or cancelled due to default and the credit union has demanded payment of the outstanding balance.

**Disclosure - credit card applications**

**11.** (1) A credit union that issues credit cards and that distributes an application form for credit cards must specify the following information in the form or in a document accompanying it, including the date on which each of the matters mentioned takes effect:

1. The annual interest rate for a credit card with a fixed rate of interest.
2. If the credit card does not have a fixed rate of interest, the fact that the variable interest rate is determined by adding or subtracting a fixed percentage rate of interest to or from a public index, the public index and the fixed percentage rate to be added or subtracted from it.
3. The day on and after which interest accrues and information concerning any grace period that applies.
4. The amount of any charges other than interest charges.

(2) Subsection (1) does not apply if, on the application form or in a document accompanying it, the credit union prominently discloses,

- (a) a local or toll-free telephone number, or a telephone number with a prominent indication that collect calls are accepted, that the borrower may use to get information required by subsection (1) during the credit union's regular business hours; and
- (b) the fact that the applicant may obtain the information otherwise required by subsection (1) at that telephone number.

(3) If an individual applies for a credit card by telephone or any electronic means, the credit union must give the applicant the information required by paragraphs 1, 2 and 4 of subsection (1) when the application is made.

(4) If a credit union that issues credit cards solicits applications for them in person, by mail, by telephone or by any electronic means, the information required by paragraphs 1, 2 and 4 of subsection (1) must be disclosed at the time of the solicitation.

**Disclosure - credit cards**

**12.** (1) A credit union that enters into a credit agreement for a credit card must give the borrower an initial disclosure statement that includes the following information:

1. The information described in paragraphs 1 and 3 to 11 of subsection 10 (1).

2. The manner in which interest is calculated and the information required by paragraph 1 or 2, as the case may be, of subsection 11 (1).
3. If the credit agreement requires the borrower to pay the outstanding balance in full on receiving a statement of account,
  - i. mention of that requirement,
  - ii. the grace period by the end of which the borrower must have paid that balance, and
  - iii. the annual interest rate charged on any outstanding balance not paid when due.
4. If a lost or stolen credit card is used in an unauthorized manner, the fact that the maximum liability of the borrower is the lesser of \$50 and the maximum set by the credit agreement.
5. If a transaction is entered into at an automated teller machine by using the borrower's personal identification number, the fact that the liability incurred by the transaction is the borrower's maximum liability, despite paragraph 4.
6. If the credit union has received a report from the borrower, whether written or verbal, of a lost or stolen credit card, the fact that the borrower is not liable for any transaction entered into through the use of the card after the credit union receives the report.

(2) If the initial credit limit is not known when the initial disclosure statement is made, the credit union must disclose it,

- (a) in the first statement of account provided to the borrower; or
- (b) in a separate statement that the borrower receives on or before the date on which the borrower receives that first statement of account.

(3) Despite section 13, if a credit agreement for a credit card is amended, the credit union must give the borrower a written statement at least 30 days before the amendment takes effect, and the statement must set out the changes to the information that was required to be given to the borrower in the initial disclosure statement, excluding information about the following changes:

1. Any change in the credit limit.
2. Any extension to the grace period.

3. Any decrease in charges other than interest charges and default charges referred to in paragraphs 3 and 7 of subsection 10 (1).
4. Any change concerning information about any optional service in relation to the credit agreement that is referred to in paragraph 9 of subsection 10 (1).
5. Any change in a variable interest rate referred to in paragraph 2 of subsection 11 (1) as a result of a change in the public index referred to in that paragraph.

(4) A change described in paragraphs 1 to 4 of subsection (3) must be disclosed in the first periodic disclosure statement that is given to the borrower after the amendment to the credit agreement is made.

(5) A credit union that issues credit cards must give each borrower additional disclosure statements on a regular periodic basis, at least once a month that contain the following information:

1. The information described in subsections 10 (3) and (4), other than paragraphs 2 and 3 of subsection 10 (3).
2. An itemized statement of account that describes each transaction and discloses each amount credited or charged, including interest, and the dates when those amounts were posted to the account.
3. The amount that the borrower must pay, on or before a specified due date, in order to have the benefit of a grace period.
4. The sum for payments and the sum for purchases, credit advances and interest and other charges.

(6) For the purpose of paragraph 2 of subsection (5), an itemized statement of account is adequate if it permits the borrower to verify each transaction described by linking it with a transaction record provided to the borrower.

#### **Disclosure after amendment to a credit agreement**

**13.** (1) Subject to subsection (2), if a credit agreement is amended by a subsequent agreement, the credit union must give the borrower a written statement within 30 days after the subsequent agreement is entered into, and the statement must describe the changes to the information in the initial disclosure statement for the credit agreement.

(2) If a credit agreement for a fixed amount has a schedule for instalment payments and the schedule is amended by a subsequent agreement, the credit

union must give the borrower a written statement within 30 days after the subsequent agreement is entered into, and the statement must set out the new payment schedule and any increase in the total amount to be paid or the cost of borrowing.

**Disclosure - renewal of a mortgage**

**14.** (1) If a credit agreement for a loan secured by a mortgage is to be renewed on a specified date, the credit union must give the borrower an additional disclosure statement at least 21 days before the specified renewal date and the statement must contain the information required by,

- (a) section 8, if the credit agreement is for a fixed interest rate; or
- (b) section 9, if the credit agreement is for a variable interest rate.

(2) The additional disclosure statement must specify that,

- (a) the cost of borrowing will not be increased after the disclosure statement is given to the borrower and before the credit agreement is renewed; and
- (b) the borrower's rights under the credit agreement continue, and the renewal does not take effect, until the day that is the later of the specified renewal date and the day that is 21 days after the borrower receives the statement.

(3) A credit union that does not intend to renew a credit agreement for a loan secured by a mortgage after its term ends shall notify the borrower of its intention at least 21 days before the end of the term.

**Disclosure - offer to waive payment**

**15.** (1) If, under a credit agreement for a loan for a fixed amount, a credit union offers to waive a payment without waiving the accrual of interest during the period covered by the payment, the credit union must disclose to the borrower in a prominent manner in the offer that interest will continue to accrue during that period if the borrower accepts the offer.

(2) If a credit union offers to waive a payment under a credit agreement for a line of credit or a credit card, the credit union must disclose to the borrower in a prominent manner in the offer whether interest will continue to accrue during any period covered by the offer if the borrower accepts the offer.

**Disclosure - cancellation of optional services**

**16.** (1) A disclosure statement made in relation to a credit agreement under which optional services, including insurance services, are provided on an on-going basis must specify that,

- (a) the borrower may cancel the optional service by notifying the credit union that the service is to be cancelled effective on the earlier of,
  - (i) one month after the day that the credit union gave the borrower the disclosure statement, and
  - (ii) the last day of the notice period, if any, provided for in the credit agreement; and
- (b) the credit union shall, without delay, refund or credit the borrower with the proportional amount, calculated in accordance with the formula set out in subsection (2), of any charges for the service paid for by the borrower or added to the balance of the loan, but unused as of the cancellation date described in clause (a).

(2) The proportion of charges to be refunded or credited to a borrower are calculated using the formula,

in which,

"R" is the amount to be refunded or credited,

"A" is the amount of the charges,

"n" is the period between the imposition of the charge and the time when the services were, before the cancellation, scheduled to end, and

"m" is the period between the imposition of the charge and the cancellation.

## PAYMENTS AND CHARGES

### Prepayment of loans

17. (1) This section applies to loans for fixed amounts of credit, except mortgage loans.

(2) A borrower may prepay the outstanding balance under a credit agreement, at any time, without incurring any charge or penalty for making the prepayment.

(3) If the borrower prepays the outstanding balance, the credit union must refund to the borrower or credit the borrower with the proportional amount of any charges, other than interest charges and disbursement charges, paid by the borrower or added to the balance, calculated in accordance with the formula set out in subsection (6).

(4) A borrower may prepay part of the outstanding balance under a credit agreement,

- (a) on the date of any scheduled payment, if payments are scheduled once a month or more often; or
- (b) at any time but only once a month, in any other case.

(5) A borrower who prepays part of the outstanding balance is not entitled to a refund or to a credit for charges other than interest charges.

(6) The proportion of the charges to be refunded or credited to a borrower under this section is determined using the formula,

in which,

"R" is the amount to be refunded or credited,

"A" is the amount of the charges other than interest charges,

"n" is the period between the imposition of the charge and the scheduled end of the term of the loan, and

"m" is the period between the imposition of the charge and the prepayment.

### Default charges

18. If a borrower under a credit agreement fails to make a payment when it becomes due or fails to comply with an obligation in the agreement, in addition to

interest, the credit union may impose charges for the sole purpose of recovering the costs reasonably incurred,

- (a) for legal services required to collect or attempt to collect the payment;
- (b) for expenses incurred to realize on a security interest taken under the credit agreement or to protect such a security interest, including the cost of legal services required for that purpose; or
- (c) for expenses incurred to process a cheque or other payment instrument that the borrower used to make a payment under the loan but that was dishonoured.

## **ADVERTISING**

### **Advertising - loan for a fixed amount**

**19.** (1) If a credit union advertises a loan involving a fixed amount of credit and if the advertisement includes a representation about the interest rate or the amount of any payment or of any charge other than interest, the advertisement must also include the APR and the term of the loan, and the APR must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally or both.

(2) If the APR or the term of the loan is not the same for all loans to which the advertisement relates, the disclosure must be based on an example of a loan that fairly depicts those loans and is identified as a representative example of them.

### **Advertising - line of credit**

**20.** If a credit union advertises a loan involving a line of credit and if the advertisement includes a representation about the annual interest rate or the amount of any payment or of any charge other than interest, the advertisement must also include the annual rate of interest on the date of the advertisement and any initial or periodic charges other than interest and that information must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally or both.

### **Advertising - credit card**

**21.** If a credit union advertises a credit card and if the advertisement includes a representation about the annual interest rate or the amount of any payment or of any charge other than interest, the advertisement must include the annual rate of interest on the date of the advertisement and any initial or periodic charges other than interest and that information must be provided at least as prominently as the representation and in the same manner as the representation is made, whether visually or aurally or both.

### **Advertising - interest-free periods**

22. (1) If a credit union advertises that it will finance a transaction and if the advertisement includes a representation, express or implied, that a period of the loan is free of any interest charges, the advertisement must indicate whether interest accrues during the period and is payable after the period and that information must be provided at least as prominently as the representation, if it was express, or in a prominent manner, if it was implied.

(2) If interest does not accrue during the period, the advertisement must also disclose any conditions that apply to the forgiving of the accrued interest and the APR, or the annual interest rate in the case of credit cards or lines of credit, for a period when those conditions are ~~not~~ met.

## **PURCHASING INSURANCE**

### **Insurance**

23. (1) A borrower who is required by a credit union to purchase any insurance may purchase it from any insurer who may lawfully provide that type of insurance, except that the credit union may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

(2) A credit union who offers to provide or to arrange insurance referred to in subsection (1) must at the same time clearly disclose to the borrower in writing that the borrower may purchase the required insurance through an agent and from an insurer of the borrower's choice.

## VII. CONSULTATION DRAFT OF CAPITAL ADEQUACY GUIDELINE

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Consultation Draft

# Guideline

**Subject:** Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires

**Date:** TBA

The *Credit Union and Caisses Populaires Act, 1994* and Ontario Regulation \_/09 incorporates by reference this *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires*. Compliance to this Guideline is therefore required in the same manner as compliance to the incorporating Act and regulation.

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## **1. Total Assets – other amounts to be deducted [s. 15(1) “B” vi]**

Under the regulation, the total assets of a credit union is calculated by adding all of the credit union's assets and then subtracting the amounts listed in the regulation including the amounts set out in this Guideline. At this time no additional amount is set out in this Guideline.

## **2. Total Assets - Equity Method of Accounting [s.15 (2) 3]**

Under the regulation, a credit union must calculate an investment in the shares of a subsidiary using the equity method of accounting described in this Guideline.

Under the equity method of accounting, the credit union initially records its investment in the subsidiary at the original cost of the investment. The recorded value of the investment is then adjusted to include the credit union's pro-rata share of the net income earned (or loss incurred) by the subsidiary since the date of the acquisition, less the amortization of goodwill and dividends received from the subsidiary.

Credit unions with investments in subsidiaries are required to ensure that all asset and liability values of subsidiaries are determined in accordance with generally accepted accounting principles for each reporting period and that any impairment in values is properly reflected in investment carrying values.

ACQUISITION COST	\$XXX
PLUS: Post acquisition pro-rata share of net income (loss) including other impairment losses of the subsidiary at the reporting date	XXX
LESS: Amortization of goodwill	(XXX)
Dividends Received from Subsidiary	(XXX)
VALUE OF INVESTMENT IN SUBSIDIARY	<u>XXX</u>

### **3. Tier 2 Capital [s. 16(3) 6]**

The regulation provides that the calculation of Tier 2 capital is to include any other amounts set out in this Guideline. At this time, no additional amount is set out.

### **4. Value attributed to off balance sheet exposures [17(3), 17(4), 17(5), and 17(6)]**

In order to determine the value attributed to any off balance sheet exposure relating to assets listed in each of the risk weight categories in subsections 17(3) to 17(6), the face amount (notional principal amount) of the exposure must be first multiplied by an appropriate credit conversion factor. The credit conversion factors are listed below.

#### *100% Conversion factor*

- *Direct credit substitutes*, as described in Appendix 1 to this Guideline
- Acquisitions of risk participation in bankers' acceptances and participation in direct credit substitutes (for example, standby letters of credit),
- Sale and repurchase agreements,
- *Forward asset purchases*, as described in Appendix 1 to this Guideline

#### *50% Conversion factor*

- *Transaction-related contingencies* as described in Appendix 1 to this Guideline
- *Commitments*, as described in Appendix 1 to this Guideline, with an original maturity exceeding one year, including underwriting commitments and commercial credit lines
- Open-ended *commitments* that are cancellable by the credit union at any time subject to a notice period

#### *20% Conversion factor*

- *Trade-related contingencies*, as described in Appendix 1 to this Guideline
- *Commitments*, as described in Appendix 1 to this Guideline, with an original maturity of one year or less

#### *0% Conversion factor*

- *Commitments*, as described in Appendix 1 to this Guideline, that are unconditionally cancellable at any time by the credit union without prior notice or that effectively provide for automatic cancellation due to deterioration in the borrower's creditworthiness. This includes undated or open-ended commitments, such as unused credit card lines, personal lines of credit, and overdraft protection for personal chequing accounts that are unconditionally cancellable at any time.

**Example:**

A credit union has an off-balance sheet exposure consisting of a commitment expiring in less than one year of a \$500,000 agricultural loan.

Since a 20% conversion factor applies to commitments with an original maturity of one year or less, the value of this off-balance sheet exposure is determined by multiplying the face value of the commitment by a 20% conversion factor.

**Example: Off-Balance Sheet Exposure**

Face amount/Notional principal amount	\$500,000
Conversion Factor	20%
Value of the off balance sheet exposure	\$100,000

This value is then assigned a risk weight in the manner required by the regulation as illustrated below:

**Example: Off-Balance Sheet Exposure**

Value of the off balance sheet exposure	\$100,000
Risk Weight for Agricultural Loan as per 17(5) 5 of regulation	75%
Risk weighted amount	\$75,000

**5. Credit ratings for commercial loans and securities [17(7)]**

The Regulation provides that commercial loans are risk-weighted at 100 per cent or must be risk weighted in accordance with this Guideline if the person to whom the commercial loan is made has a credit rating described in this Guideline.

The following table sets out the risk weighting for a commercial loan made to a person who has received the indicated credit rating by an external credit rating agency. Credit unions should use the same rating agency for both risk weighting and risk management purposes. If a credit union chooses two ratings agencies whose rating corresponds to different risk weights, the higher risk weight should be applied.

Risk Weight	External Credit Rating Institution		
	DBRS	S&P/FITCH	Moody's
20%	AAA to AA (low)	AAA to AA -	Aaa to Aa3
50%	A(high) to A (low)	A+ to A-	A1 to A3
100%	BBB (high) to B (low)	BBB+ to B-	Ba1 to B3
150%	CCC	Below B-	Below B3

## 6. Privately insured residential mortgages [17(8)]

The table in paragraph 5 is to be used to determine the risk-weighting of the portion of the residential mortgage loan described in subsection 17(8) of the regulation.

## 7. Liquidity [19(4)4.ii]

The table in paragraph 5 also sets out equivalent ratings to the Dominion Bond Rating Service (DBRS) for the purposes of paragraph 4.ii of subsection 19(4) of the regulation.

## Appendix 1

### Further clarification on commitments etc.

#### 1. Direct credit substitutes

Direct credit substitutes include guarantees or equivalent instruments backing financial claims. With a direct credit substitute, the risk of loss to the credit union is directly dependent on the creditworthiness of the counterparty.

Direct credit substitutes include guarantees or obligations of the member and include:

- Guarantees given by the credit union on behalf of members to satisfy a member's financial obligations should the member fail to do so, such as:
  - payment for existing indebtedness for services
  - payment with respect to a purchase agreement
  - lease, loan or mortgage payments
  - payment of uncertified cheques
  - remittance of (sales) tax to the government
  - payment of existing indebtedness for merchandise purchased
  - payment of an unfunded pension liability
  - reinsurance of financial obligations,
- Standby letters of credit or other equivalent irrevocable obligations, serving as financial guarantees for, or supporting, loans and securities
- Risk participation in bankers' acceptances and risk participation in financial letters of credit. Risk participation constitutes guarantees by the participating institutions such that, if there is a default by the underlying obligor, they will indemnify the selling institution for the full principal and interest attributable to them

#### 2. Forward Asset Purchases

A forward asset purchase is a commitment to purchase a loan, security, or other asset at a specified future date, usually on prearranged terms, and includes financing facilities with certain draw-down.

### *3. Transaction-related contingencies*

Transaction-related contingencies (for example, bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction) relate to the ongoing business activities of a counterparty, where the risk of loss to the reporting institution depends on the likelihood of a future event that is independent of the creditworthiness of the counterparty. Essentially, transaction-related contingencies are guarantees that support particular performance of non-financial or commercial contracts or undertakings, rather than supporting customers' general financial obligations. Performance-related guarantees specifically exclude items relating to non-performance of financial obligations.

### *4. Commitments*

A commitment involves an obligation (with or without a material adverse change or similar clause) of a credit union to fund its member in the normal course of business should the member seek to draw down the commitment. Normally, commitments involve a written contract or agreement and a commitment fee or some other form of consideration.

When determining the maturity of the commitment, the term should be measured from the date when the commitment was accepted by the customer until the earliest date on which the commitment is scheduled to expire or the credit union can at its option, unconditionally cancel the commitment.

### *5. Trade-related contingencies*

These include short-term, self-liquidating trade-related items such as commercial and documentary letters of credit issued by the credit union that are, or are to be, collateralized by the underlying shipment. Letters of credit issued on behalf of counterparty with letters of credit of which the counterparty is a beneficiary ("back-to-back" letters) should be reported as documentary letters of credit. Letters of credit advised by the credit union for which the credit union is acting as reimbursement agent should not be considered as a risk asset.



*Credit Unions and Caisses Populaires Act, 1994*  
*Additional Draft Regulations for Consultation*



*Note that these regulations will become law only if  
the Lieutenant Governor in Council proclaims  
legislative changes and approves the regulations.*



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